

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK POOLE,

Appellant,

Supreme Court Case No: 74808

v

District Court Case No.:
A-16-737120-C

NEVADA AUTO DEALERSHIP
INVESTMENTS LLC a Nevada
Limited Liability Company d/b/a
SAHARA CHRYSLER, JEEP,
DODGE, and COREPOINTE
INSURANCE COMPANY,

Respondents,

Appeal from the Eighth Judicial District Court, Clark County.
The Honorable Nancy Alff, District Court Judge

APPELLANT'S APPENDIX VOLUME 5

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7	3/28/18	Notice of Entry of Judgment	1406-1409

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3 I certify that the aforementioned is true and correct under penalty of perjury
4 under the laws of the state of Nevada.

5 Executed this 19th day of October, 2017.

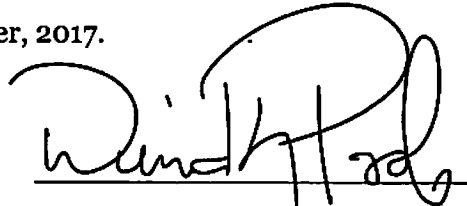
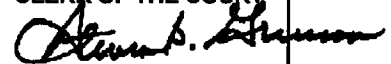
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EXHIBIT 8

 ORIGINAL

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Attorney for Plaintiffs
DERRICK POOLE

DISTRICT COURT
CLARK COUNTY, SAHARA

DERRICK POOLE,

Plaintiff,

v

SAHARA AUTO DEALERSHIP INVEST-
MENTS LLC a Nevada Limited Liability
Company d/b/a SAHARA CHRYSLER,
JEEP, DODGE, WELLS FARGO DEALER
SERVICES INC., COREPOINTE INSUR-
ANCE COMPANY, and DOES 1 through 100,
Inclusive,

Defendants,

CASE NO : A-16-737120-C
DEPT : XXVII

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS**

DATE : September 27, 2017

TIME : 9:30 a.m.

Poole v Nevada Auto Dealership Investments**Date of Hearing : September 27, 2017****I****APPEARANCES**

For Plaintiff DERRICK POOLE : George O. West III, Law Offices of George O. West III, Consumer Attorneys Against Auto Fraud. *AND Craig B. Friedberg, Esq., Law Offices of Craig Friedberg Co-counsel*

For Defendants SAHARA AUTO DEALERSHIP INVESTMENTS LLC d/b/a SAHARA CHRYSLER, JEEP DODGE and COREPOINT INSURANCE COMPANY: Jeff Bendavid, Moran, Brandon, Bendavid, Moran

For Defendant WELLS FARGO DEALER SERVICES INC: (no appearance), Nate Kanute, Snell & Wilmer

II**FINDINGS**

On September ²⁷~~28~~, 2017 Plaintiff's Motion to Compel Defendant SAHARA AUTO DEALERSHIP INVESTMENTS LLC's d/b/a SAHARA CHRYSLER, JEEP DODGE ("SAHARA") to Admit Requests for Admissions Without Qualification 2) Plaintiff's Motion to Compel Further Responses to Interrogatories and 3) Plaintiff's Motion to Compel Further Response to Requests to Production of Documents and to Compel Documents, came on for hearing on shortening time.

Defendant SAHARA's Motion for Protective Order also came on for hearing on shortening time.

Based on further supplemental responses served by Defendant regarding certain Requests for Admissions, Plaintiff filed a notice of change of status on September 22, 2017 with the Commissioner withdrawing Plaintiff's motion to compel with respect to interrogatories and requests for production of documents, as well as Plaintiff's previously notice of taking of depositions of certain employees from Defendant. However, Plaintiff's Motion to Compel Unqualified Admissions from Defendant SAHARA with respect to request for admission numbers 9, 11, 12, 17, 22 an 23 through 32 remained on calendar.

III

RECOMMENDATIONS

IT IS RECOMMENDED:

Plaintiff's Motion to Compel Defendant SAHARA to Unconditionally Admit Requests for Admissions is *granted*. Defendant SAHARA shall submit supplemental responses to request for admission numbers 9, 11, 12, 17, 22, and 23 through 32. Defendant SAHARA shall either admit or deny the admission without the qualification "the document speaks for itself." Should a request seek a factual admission as to the content of a document attached to or identified in Plaintiff's requests, Defendant SAHARA may qualify the admission based only upon the that particular document referenced in the request should they want to do so, but shall not qualify any response to any request for admission with "the document speaks for itself." Sanctions are denied as to both sides.

Defendant shall provide supplemental responses consistent with these recommendations no later then October 13, 2017. Defendant SAHARA's counsel indicated on the record during the hearing that he would have supplemental responses to Plaintiff by close of business Monday, October 2, 2017.

Defendant SAHARA's Motion for Protective Order is moot based upon Plaintiff stipulating to take the depositions at issue off calendar.

Plaintiff is prepare the proposed recommendations for review by all active parties and file such recommendations with the Commissioner within ten days.

A-16-737120-C
Poole v Nevada Auto Dealership Investments
Date of Hearing : September 27, 2017

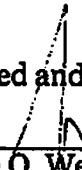
The Discovery Commissioner having met and/or subsequently conferred with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

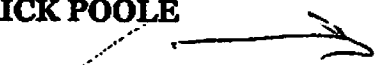
Dated this 26 day of October, 2017



DISCOVERY COMMISSIONER

Prepared and Submitted by :

By 
George O. West III
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
Attorney for Plaintiff
DERRICK POOLE

By 
Jeff Bendavid
Moran, Brandon, Bendavid Moran
Attorneys for Defendant
**SAHARA AUTO DEALERSHIP INVEST-
MENTS LLC, SAHARA CHRYSLER,
JEEP, DODGE**

By 
Nate Kanute
Snell & Wilmer
Attorneys for Defendant
WELLS FARGO DEALER SERVICES INC.


The Discovery Commissioner having met and/or subsequently conferred with counsel for the parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

Dated this ____ day of _____, 2017

DISCOVERY COMMISSIONER

Prepared and Submitted by :

By _____
George O. West III
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
Attorney for Plaintiff
DERRICK POOLE

By  11/23/17
Jeff Bendavid
Moran, Brandon, Bendavid Moran
Attorneys for Defendant
**SAHARA AUTO DEALERSHIP INVEST-
MENTS LLC, SAHARA CHRYSLER,
JEEP, DODGE**

By 
Nate Kanute
Snell & Wilmer
Attorneys for Defendant
WELLS FARGO DEALER SERVICES INC.

NOTICE

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections. The Commissioner's Report is deemed received three (3) days after mailing to a party or the party's attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. E.D.C.R. 2.34(f). A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____, 20____:

_____ Placed in the folder of counsel in the Clerk's office on the _____ day of _____, 20____.

✓ Electronically served counsel on October 30, 2017, Pursuant to N.E.F.C.R. Rule 9.

~~STEVEN D. GRIERSON~~

By: Natilie L.
Deputy Clerk
Commissioner Designee

ORDER

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

The parties having waived the right to object thereto,

No timely objection having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

AND

IT IS HEREBY ORDERED the Discovery Commissioner's Report & Recommendations are affirmed and adopted.

IT IS HEREBY ORDERED the Discovery Commissioner's Report And Recommendations are affirmed and adopted as modified In the following manner. (attached hereto)

IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for _____, 20____, at _____ a.m.

Dated this 20 day of Nov., 20 17.

Nancy L. Allen
DISTRICT COURT JUDGE

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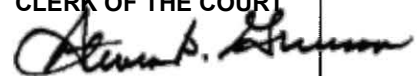
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1 **RPLY**

2 **JEFFERY A. BENDAVID, ESQ.**

3 Nevada Bar No. 6220

4 **STEPHANIE J. SMITH, ESQ.**

5 Nevada Bar No. 11280

6 **MORAN BRANDON BENDAVID MORAN**

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8 Las Vegas, Nevada 89101

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11 s.smith@moranlawfirm.com

12 *Attorney for Defendants, Nevada Auto*

13 *Dealership Investments LLC d/b/a Sahara*

14 *Chrysler and Corepointe Insurance Co.*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 DERRICK POOLE,

18 Plaintiff,

19 v.

20 NEVADA AUTO DEALERSHIP
21 INVESTMENTS LLC, a Nevada Limited
22 Liability Company d/b/a SAHARA
23 CHRYSLER; JEEP, DODGE, WELLS
24 FARGO DEALER SERVICES INC.,
25 COREPOINTE INSURANCE
26 COMPANY; and DOES 1 through 100,
27 Inclusive,

28 Defendant.

Case No.: A-16-737120-C

Dept. No.: XXVII

**DEFENDANT NEVADA AUTO
DEALERSHIP INVESTMENTS LLC'S
REPLY IN SUPPORT OF MOTION
FOR ATTORNEYS' FEES AND COSTS**

Hearing Date: February 1, 2018

Hearing Time: 9:30 a.m.

23 COMES NOW, pursuant to the provisions of NRS §18.010 and NRS §18.020,
24 Defendant, NEVADA AUTO DEALERSHIP INVESTMENTS LLC d/b/a SAHARA
25 CHRYSLER JEEP DODGE RAM ("Defendant" and/or "Sahara Chrysler") by and through
26 its counsel of record, JEFFERY A. BENDAVID, ESQ., and STEPHANIE J. SMITH, ESQ.,
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

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PHONE: (702) 384-8424
FAX: (702) 384-6568

1 of MORAN BRANDON BENDAVID MORAN, and hereby submits its Reply to Plaintiff's
2 Opposition to its Motion for Attorneys' Fees and Costs.

3 This Reply is made and based upon the Points and Authorities attached hereto, along
4 with the underlying Motion and pleadings and papers on file herein, any declarations
5 submitted herewith, and any oral argument the Court may allow at the time for hearing on
6 this matter.
7

8 DATED this 25th day of January, 2018.

9 **MORAN BRANDON BENDAVID MORAN**

10
11 /s/ Jeffery A. Bendavid.

12 **JEFFERY A. BENDAVID, ESQ.**

13 Nevada Bar No. 6220

14 **STEPHANIE J. SMITH, ESQ.**

15 Nevada Bar No. 11280

16 630 South 4th Street

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19 *Attorneys for Defendants, Nevada Auto*
20 *Dealership Investments LLC d/b/a Sahara*
21 *Chrysler and Corepointe Insurance Co.*
22
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Despite Plaintiff's claims that he is not trying to reargue his opposition to
4 Defendant's motion for summary judgment he, in fact, attempts to do so. Plaintiff
5 continuously fails to acknowledge that despite the allegations formulated by his retained
6 counsel and hired expert, he suffered no damages of any kind. And, in fact, continuously
7 utilized the Vehicle at issue well into litigation with no problems. Defendant is not claiming
8 it should be awarded attorneys' fees based on the fact it won summary judgment, but on the
9 facts and evidence of the record that demonstrate Plaintiff's claims were both legally and
10 factually deficient, which was merely affirmed by the fact that Defendant prevailed on
11 summary judgment. Further, despite engaging in no tortious conduct, Defendant proffered a
12 fair and reasonable Offer of Judgment that Plaintiff unreasonably rejected, particularly due
13 to his lack of any damages, and claims solely premised on the flawed conclusions of his
14 retained expert. Plaintiff wanted compensation for purely hypothetical damages, that did not
15 have an adequate legal basis and persisted because he had no other choice but to try to
16 obtain money from a jury, after it was clear that his claims were not reasonable and
17 unsupported by credible evidence.
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21 **II. LEGAL ARGUMENT**

22 **A. Defendant Should Be Awarded its Attorneys' Fees Pursuant to NRS 18.**
23 **18.010(2)(b) Because the Credible Actual Evidence Demonstrates that**
24 **Plaintiff's Claims Were Brought and Maintained Without a Reasonable**
25 **Basis.**

26 Again, the underlying facts of this matter are simple, the Plaintiff purchased a truck
27 and drove it without issue for multiple years and for thousands of miles, without a single
28 repair or warranty claim. Only when, by Plaintiff's own admission, he tried to obtain an



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1 additional refinance, did he have any issue with his Vehicle. And, indeed, Plaintiff's own
2 text messages evidence the purported basis of his claims that Defendant failed to disclose a
3 "major" accident on the Vehicle. This fact was blatantly false as Plaintiff signed a CarFax
4 clearly indicating that the Vehicle had been in an accident and that it had been towed as a
5 result. All of Plaintiff's claims rest on the singular and legally unsupported assertion that
6 somehow, despite no legal duty, Defendant should have disclosed every single replaced
7 and/or repaired part on the subject Vehicle. This legal assertion simply is untrue, and
8 Plaintiff's claims are not otherwise seeking to address any novel areas of law.

10 Plaintiff first puts forth five cases which he alleges supports denial of attorneys' fees
11 for Defendant, however, Plaintiff's facts, no matter how many times he tries to repeat them
12 are notably and significantly distinguishable from the cases he cites. For instance, in
13 *Baldonado v. Wynn Las Vegas, LLC*, the Court specifically stated that mater dealt with
14 "law" that was "complex" and "unsettled." 124 Nev. 951, 968 (2008). Furthermore, the
15 Court specifically noted that, "[D]etermining whether attorney fees should be awarded
16 under *NRS 18.010(2)(b)* requires the court to inquire into the actual circumstances of the
17 case, 'rather than a hypothetical set of facts favoring plaintiff's averments.' *Id. at 967-968*.
18 And, that "*NRS 18.010(2)(b)* must be liberally construed in favor of awarding attorney fees
19 whenever appropriate." *Id. at 968 (emphasis added)*.

22 Indeed, in other cases cited to by Plaintiff, the Court reversed awards because they
23 found the awards to be premature, or that some of the claims and issues brought by the
24 plaintiffs in those circumstances were "reasonable." *See Kahn v. Morse & Mowbray*, 121
25 Nev. 464 (2005), *see also Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470 (2009). Here,
26



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1 Plaintiff brought and maintained claims without credible evidence, even as it became
2 glaringly apparent that his claims were without reasonable grounds.

3 Here, by Plaintiff's own admission he alleges he sought an attorney when he was
4 informed by a wholly unconnected third-party insurer that the Vehicle had possibly been in
5 a wreck with frame damage thus denying him a third refinance. *See Exhibit A- Deposition*
6 *excerpt of Derrick Poole, 23:4-12.* However, at no time during discovery did Plaintiff
7 identify this anonymous mystery insurance agent, and he did not provide any documentation
8 he may have received from this denial of a refinance, indicating that the Vehicle had
9 incurred actual frame damage. And, indeed, Plaintiff admitted that he was informed, at the
10 time he purchased the Vehicle, that it had been in an accident. *Exhibit A.* Plaintiff also
11 claimed he ran his own "Auto Check" report, that reflected some "frame" damage reported.
12 See Exhibit A, However, Plaintiff testified to this only after his lawsuit had been filed and in
13 litigation for over a year, and failed to provide any copy of the alleged "Auto Check" report
14 on which he purportedly based his claims. In fact, Plaintiff changed the basis of the claims
15 to try to fit within the statutes he brought suit under, because he affirmed that his claims
16 were baseless. *See generally, Complaint and First Amended Complaint.*

17 Additionally, Plaintiff continued to utilize the subject Vehicle during the pendency
18 of litigation. Indeed, there was no credible evidence that Defendant failed to comply any
19 applicable statutory requirements as alleged by Plaintiff. In turn, because Plaintiff's
20 statutory claims were groundless and lacking in credible evidence, so too were his equitable
21 claims, as there was no separate basis for those claims, as conceded by Plaintiff at the time
22 for hearing of Defendant's Motion for Summary Judgment. *See Opposition, 9:1-4.*



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1 To reiterate, Plaintiff knew that he did not suffer damages, as he continued to utilize
2 the Vehicle without incident (minus an accident he independently was in). *See generally,*
3 *Motion for Summary Judgment and Exhibits thereto.* Plaintiff knew he made no warranty
4 claims, required no repairs, and did not otherwise have an issue with his Vehicle until he
5 was allegedly unable to refinance it. *Id.* Plaintiff, at the time of filing his Complaint, and his
6 First Amended Complaint, knew that he continued to drive the Vehicle even after his
7 “expert” inspected it, and allegedly found “safety” issues. *Id.* Plaintiff’s Opposition to
8 Defendant’s fees, tries to again argue that his claim was valid pursuant to the statute. *See*
9 *generally, Opposition.* However, Plaintiff has produced no credible evidence, that
10 Defendant conducted itself in any way contrary to either any applicable statutory
11 requirements or even its own guarantees. Defendant always, undisputedly sold Plaintiff a
12 Vehicle that had been in a previous accident, which it had inspected and subsequently
13 certified as a Certified Pre-Owned Vehicle. *See generally, Defendant’s Motion for Summary*
14 *Judgment, and Opposition thereto.*

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17 Accordingly, Plaintiff, through his retained legal counsel, knew that there was no
18 credible evidence to bring a claim for statutory consumer fraud against Defendant.
19 Plaintiff’s conclusory and self-serving allegations do not constitute “credible evidence.”
20 When this Court analyzed the actual facts on record, they clearly showed that despite
21 Plaintiff’s protests and alleged claims, he still drove the Vehicle without incident. In fact,
22 Plaintiff even testified he had not tried to sell his Vehicle or otherwise replace it. *See Exhibit*
23 *A, 31.*

24
25
26 Plaintiff, in his Opposition has still failed to provide any actual statutory or other
27 legal requirement for Defendant to disclose each and every repair and/or replacement part
28



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1 that the Vehicle may have had at the time Plaintiff purchased it. See generally, Opposition.
2 Further, Plaintiff has still failed to acknowledge that he had any responsibility as a consumer
3 that had purchased multiple trucks, to do any inquiry into the Vehicle itself. Including,
4 utilizing the same exact means by which he was allegedly informed that there was a
5 potential issue (again, Plaintiff produced no evidence of that information).
6

7 Again, NRS 18.020(2)(b) specifically instructs that, “[T]he court shall liberally
8 construe the provisions of this paragraph in favor of awarding attorney’s fees in all
9 appropriate situations,” and this Courts should award Defendant attorneys’ fees under this
10 legal basis. Plaintiff clearly continued to pursue claims and theories for deceptive trade
11 practices on unreasonable grounds, despite no initial or subsequent evidence that any
12 deceptive trade practices were actually engaged in by the Defendant, and continued on.
13 Plaintiff even admitted that he had no knowledge of potentially repaired and/or replaced
14 parts until after the commencement of litigation. Plaintiff attempts to frame Defendant’s
15 knowledge that the Vehicle had been in a previous accident from which it had been repaired
16 by a third-party with authorization from an insurance agency as credible evidence that it
17 engaged in a deceptive consumer trade practice. *See Opposition, 13-15.* However, Plaintiff
18 failed to provide any credible actual evidence that Defendant knew or had knowledge that it
19 should not have certified and/or sold the subject Vehicle as a Certified Pre-Owned Vehicle,
20 and presented no credible evidence that Defendant otherwise withheld any “material” facts.
21 *See Opposition to Motion for Summary Judgment and Exhibits thereto.*
22
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25 Plaintiff’s later representations that he would not have purchased the Vehicle if he
26 had been made aware of each and every part that had been allegedly “repaired” or
27 “replaced” is disingenuous, because Plaintiff purchased the Vehicle with full knowledge of
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1 the previous accident and testified that he did not know what multiple of the various
2 purportedly “replaced” and/or “repaired” parts ever were. *See Motion for Summary*
3 *Judgment*. Plaintiff’s self-serving conclusory allegations, opinions, and general advertising
4 do not constitute “credible” evidence that fraud was perpetrated by Defendant no matter
5 how many times Plaintiff tries to make it so. As such, Defendant should be awarded its
6 reasonable attorneys’ fees as detailed in the underlying motion for fees and costs, pursuant
7 to NRS §18.010, 18.202(2)(b) et seq., of Two Hundred Eleven Thousand, Nine Hundred
8 Eighty-Two Dollars and Fifty Cents (\$211,982.50).¹

10 **B. Defendant is entitled to Reasonable Attorneys’ Fees from the Time its**
11 **Offer of Judgment was made Because the Beattie Factors Do Weigh in**
12 **its Favor.**

13 While Plaintiff’s attorney contends he cannot adequately assess the reasonableness
14 of Defendant’s bills, Plaintiff does not contest the billing rate, the overall amount of time
15 expended or the skill or quality of attorneys who worked on this matter. *See generally,*
16 *Opposition*. This information was all available to Plaintiff in the sworn statement of Jeffery
17 Bendavid, Esq., and attached to the underlying Motion. This is notable since all these factors
18 weigh in favor of a finding of reasonability in Defendant’s fee request. *See Brunzell v.*
19 *Golden Gate Nat’l Bank, 85 Nev. 345, 349 (1969).*

21 When all of the factors are analyzed in assessing whether Defendant is entitled to
22 attorneys’ fees are assessed as a whole, they clearly support an award of attorneys’ fees and
23 costs for Defendant. As laid out previously, the Court is to evaluate four factors to assess
24 whether an award of attorneys’ fees after the rejection of an Offer of Judgment is merited.
25 *See Beattie v. Thomas, 99 Nev. 579 (1983).* Those factors are: (1) whether the plaintiff’s

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¹ Defendant still seeks its costs in this matter pursuant to NRS §18.020 and NRS 18.110 and NRCP 54 and 68,
pursuant to the verified memorandum of costs and supplemental verified memorandum of costs.



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1 claim was brought in good faith; (2) whether the defendants' offer of judgment was
2 reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's
3 decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and
4 (4) whether the fees sought by the offeror are reasonable and justified in amount. *Id.*

5
6 **1. Plaintiff's Claims were Not Brought or Maintained in Good Faith.**

7 As discussed herein, Plaintiff's claims were not brought or maintained on credible
8 evidence or on a reasonable legal or factual basis. Plaintiff failed to actually provide any
9 credible evidence and proffered only unsubstantiated "expert" opinion and speculation.
10 Most notably, Plaintiff had no damages whatsoever, from the time he filed his Complaint
11 through the pendency of this litigation. In fact, Plaintiff admits that after he allegedly found
12 out about undisclosed damage, he did not even bother going into the dealership itself, but
13 merely tried to exchange some texts with the salesperson. *See Exhibit A, 31.* Even more
14 tellingly, Plaintiff at first denied having been disclosed any accident whatsoever, and then
15 only after being reminded of the CarFax and his signature on it, changed his position that he
16 should have been disclosed every single detail about the accident. *See Complaint and First*
17 *Amended Complaint.* As such, the first *Beattie* factor weighs in favor of Defendant.

18
19
20 **2. Defendant Made a Reasonable and Appropriately Timed Offer of Judgment**
21 **in Good Faith.**

22 The next two factors tend to intertwine, and both of those factors weigh heavily in
23 favor of the Defendant. Plaintiff neglects to mention that additional settlement discussions
24 had occurred prior to August 17, 2017, and even prior to when Defendant's current counsel
25 substituted in officially. Here, Defendant's offer of judgment was reasonable and in good
26 faith in both its timing and amount given its position after discovery had closed and in
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1 particular, given the fact that Plaintiff had not demonstrated any damages, or any other
2 likelihood that he would prevail. *See generally, Docket.*

3 Here, Plaintiff's own submitted emails evidence that Defendant's offer of judgment
4 in the amount of \$45,000.00 was more than fair and reasonable. Pursuant to Plaintiff's offer
5 on September 25, 2017, he was willing to accept \$17, 345.74 to pay off the subject Vehicle,
6 along with, of course, keeping it (that is because Plaintiff knew there was nothing wrong
7 with the Vehicle). *See Plaintiff's Exhibit 1.* Acceptance of the \$45,000.00 Offer of Judgment
8 would have resulted in a full pay off of Plaintiff's Vehicle, plus he would have retained the
9 Vehicle pursuant to his own wishes, a more than equitable result considering Plaintiff
10 suffered no damages. Acceptance also would have left a remaining \$27,654.26, for
11 attorneys' fees and costs. Later, on October 2, 2017, Plaintiff was willing to accept \$14,500
12 along with keeping the Vehicle, thus leaving \$30,500.00 for attorneys' fees and costs.² *Id.*
13 Plaintiff's counsel represented costs in the amount of \$9,086.70, thereby leaving \$21,413.30
14 for remaining attorneys' fees. *Id.*

15 Plaintiff had no damages, he would have paid off his Vehicle, he would have
16 retained possession and continued use of the Vehicle, which he already had during the
17 pendency of litigation, as such it is clear that the only argument Plaintiff has for the Offer of
18 Judgment being "unreasonable" is that his attorney would not have made enough profit.
19 Importantly, the Offer of Judgment was made after Plaintiff was able to fully complete his
20 discovery and prior to his counsel having to prepare and filing eighty-nine (89) pages of
21 briefing to oppose Defendant's Motion for Summary Judgment. It is clear that if Plaintiff
22 had accepted the Offer of Judgment, since he had no actual damages, he would have been
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28 ² Plaintiff's attorney is a solo practitioner and did not associate any counsel until August of 2017. Also, Craig Friedberg, Esq. was not present at any depositions.



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1 rewarded for bringing his claims, and his attorney would have been reimbursed his costs,
2 along with being compensated. Plaintiff provided no case law which mandates a party's
3 attorney must recover "all of their desired fees" for an offer of judgment to be reasonable,
4 particularly since he did not prevail in his claims. This factor also weighs clearly in favor of
5 Defendant recovering its attorneys' fees from the time of its Offer of Judgment.
6

7 **3. Plaintiff's Rejection of the Offer of Judgment was Grossly Unreasonable**
8 **and/or in Bad Faith Due to his Lack of Damages and Lack of Credible**
9 **Evidence.**

10 As discussed in analyzing the previous factor, "whether the plaintiff's decision to
11 reject the offer and proceed to trial was grossly unreasonable or in bad faith" is also of
12 consideration for this Court. Defendant served an Offer of Judgment on Plaintiff on October
13 5, 2017, and despite Plaintiff's representations that there were ongoing, Plaintiff never
14 responded to the Offer of Judgment. Most notably, by September 25, 2017, Plaintiff's
15 counsel demanded \$60,850.00 in attorneys' fees alone, and a total amount of, as he admits,
16 \$87,272.44, to settle a case in which the Plaintiff sustained no actual damages. From the
17 very commencement of Plaintiff's purportedly "good faith" settlement negotiations, his
18 counsel made it abundantly clear that his fees were of paramount importance, and the "800
19 pound guerrilla." *See Exhibit 1 to Opposition.* This conduct effectively put an end to the
20 settlement negotiations.
21

22 By Plaintiff's own contention his counter offer on September 5, 2017 was
23 \$56,296.00, inclusive of all damages, fees and costs, a difference of \$11,296.00 from the
24 ultimately rejected Offer of Judgment, one month later.³ *See Opposition, 21:1-2.* Plaintiff
25 continuously neglects to mention he did not actually suffer any damages. The ultimate
26 difference in all of the discussions is solely comprised of attorneys' fees. It is true that some
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³ Plaintiff never made an offer of judgment.



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1 additional fees were incurred due to the fact that Defendant took Plaintiff's expert's
2 deposition (and Plaintiff's counsel also chose to re-direct him for an hour of the just over 6
3 hour total, deposition). However, Plaintiff also chose to depose two additional people, serve
4 additional notices for deposition (which he had ample opportunity to previously notice
5 during actual open discovery), and further refused to stipulate to continue the time for trial
6 which would have served to alleviate some fees and costs.⁴ Plaintiff did not suffer any
7 monetary damages, as he purchased and utilized the Vehicle continuously (save for a wreck
8 he was in during litigation).

10 Plaintiff's attorneys' fees were clearly the key factor in the rejection of the Offer of
11 Judgment, a grossly unreasonable consideration even with a fee-shifting provision available
12 to Plaintiff, again because Plaintiff had no damages. Indeed, Plaintiff's counsel said While
13 Offers of Judgment are not meant "unfairly force" a plaintiff out of a legitimate claim, they
14 are also not designed to necessitate a windfall to a plaintiff or his attorney. *See generally,*
15 *Beattie, supra.* Plaintiff argues that with the fee-shifting provision of NRS 41.600, attorneys'
16 fees should have been and were rightfully a key factor in the rejection of the Offer of
17 Judgment. *See generally, Opposition, 22-24.* However, the statute provides only for "costs"
18 and "reasonable" attorneys' fees. *NRS 41.600.* Here, there is no evidence provided that
19 Plaintiff's counsel (even if they had prevailed at trial) would have been entitled to any
20 amount of attorneys' fees, let alone the fees he was demanding. As such even taking into
21 consideration the fact that there was a fee shifting provision in the statute under which
22 Plaintiff brought his claims, this factor still weighs in favor of Defendant.

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⁴ Plaintiff's counsel also refused to stipulate to extend discovery beyond its August 31, 2017 close date.



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1 **4. Defendant's Attorneys' Fees are Reasonable and Justified in their Amount.**

2 As reflected in the emails attached to Plaintiff's Opposition, the significant back and
3 forth between the parties reflects the importance Plaintiff's counsel placed upon the
4 attorneys' fees. *See Exhibit 1 to Opposition*. Initially, Plaintiff wanted to keep the Vehicle,
5 and for it to be paid off (or to possibly get a new truck altogether). *See Exhibit 1*. This was
6 even after he had gotten into a wreck with the subject Vehicle, and incurred thousands of
7 dollars of damage to it. Throughout the negotiations, Plaintiff's counsel desired to act as
8 though he had already won a verdict pursuant to NRS 41.600. Indeed, Plaintiff's counsel
9 propounded the theory that despite not suffering damages, his client could only be made
10 whole by obtaining all of this attorneys' fees. *See Exhibit 1, September 5, 2017 email*. The
11 Parties, due to Plaintiff's unwillingness to compromise over his attorneys' fees, were then
12 forced to incur additional costs to take more key depositions, most notable is the fact that it
13 was Plaintiff's counsel who wanted to push ahead with those depositions while purportedly
14 engaging in good faith negotiations. Defendant had no choice but to proceed with deposing
15 Plaintiff's retained expert who was the crux of his entire case. However, as negotiations
16 progressed Plaintiff's demand for his own monetary compensation decreased from his full
17 payoff amount to \$14,500.00 while the attorneys' fees portion increased by \$17,774.00 on
18 September 25. Plaintiff's conduct evidences, at the very least, a grossly unreasonable
19 rejection of the Offer of Judgment, and the fees incurred by Defendant were reasonable.

20
21 Nevada Rule of Civil Procedure 68(f)(2) is clear, "[I]f the offeree rejects an offer and
22 fails to obtain a more favorable judgment, the offeree shall pay the offeror's post-offer costs
23 [...]

24 [...] and reasonable attorney's fees, actually incurred by the offeror from the time of the
25
26



27
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1 offer. As such, at a minimum, Defendant should be awarded the reasonable attorneys' fees
2 and costs from October 5, 2017 to the time of the entry of judgment. *See NRCP 68(f)(2)*.

3 Defendant incurred exceedingly reasonable attorneys' fees in the amount of Sixty-
4 Eight Thousand Two Hundred Eighty-Five Dollars (\$68,285.00) for 178.5 hours of work
5 from October 5, 2017 to November 29, 2017. *See Declaration of Jeffery Bendavid, attached*
6 *to Motion*. The Parties attempted to negotiate in August, September, and into October,
7 2017. The close of discovery was set for August 31, 2017, and dispositive motions were due
8 to be filed on or before October 2, 2017, with the trial in this matter set for a stack
9 commencing on November 13, 2017. Due to Plaintiff's refusal to continue trial and any
10 associated dispositive motion or motion in limine dates, despite there being no other
11 continuances or extensions of the close of discovery, Defendant was forced to file a Motion
12 to Continue Trial, along with prepare all of its motions in limine and its motion for summary
13 judgment in order to be timely. The Motion to Continue Trial was not heard until October
14 18, 2017, thus Defendant was also forced to proceed as if it were going to trial in November.
15 Despite, reasonable offers from Defendant, Plaintiff's counsel refused to settle due to the
16 amount fees and costs he purportedly incurred and wanted as part of any settlement. *Id.* The
17 emails submitted by both sides clearly evidence this fact. Defendant was forced to continue
18 to vigorously litigate this matter and commence preparing for trial after the service and
19 subsequent rejection of its reasonable Offer of Judgment. Notably, and another fact which
20 weighs in favor of Defendant, as to Plaintiff's grossly unreasonable rejection of the Offer of
21 Judgment, is that Defendant filed its Motion for Summary Judgment on October 2, 2017,
22 and served its Offer of Judgment on October 5, 2017. Therefore, Plaintiff had the full
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1 advantage of seeing all of Defendant's position, arguments, and evidence detailing
2 Plaintiff's factual and legal shortcomings.

3 Plaintiff's acceptance of this Offer of Judgment, or even continued settlement
4 negotiations or an original stipulation to extend discovery or continue trial, would have
5 avoided additional litigation and motion preparation. Most notably, Defendant's fees are
6 exceedingly reasonable, because it had to respond and litigate accordingly to preserve its
7 rights, to Plaintiff's 89 page opposition to its Motion for Summary Judgment, exclusive of
8 his exhibits, and a 17-page long substantive declaration from his expert, along with a
9 substantial hearing on the motion for summary judgment, itself. These fees are particularly
10 reasonable as Defendant had to commence, and continue, preparing for trial leading up to
11 the trial continuance as well.

12
13
14 In exercising its discretion to award attorneys' fees under *NRCP 68*, the Court must
15 evaluate the following factors: (1) whether the plaintiff's claim was brought in good faith;
16 (2) whether the offer of judgment was reasonable and in good faith in both its timing and
17 amount; (3) whether the offeree's decision to reject the offer and proceed to trial was
18 grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are
19 reasonable and justified in amount. *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001)
20 (citing *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)).

21
22 As discussed herein, Plaintiff's claim was maintained without reasonableness,
23 particularly when no actual credible evidence was proffered to substantiate his claims, and
24 in light of the continuous fact that he sustained no damages, either monetarily or physically
25 as he enjoyed the full use of the Vehicle during the time he had it. Defendant's Offer of
26 Judgment was made in good faith, and after various settlement negotiations, and in an
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1 amount higher than any of its previously offered settlement amounts. *See Exhibit 1 to*
2 *Motion for Fees and Costs.*

3 Defendant's fees are also reasonable in light of the fact that Plaintiff did not
4 challenge any of the other factors necessary to assess the reasonability of the fees, except for
5 his purported inability to evaluate all of the billing entries, which only plays a role in
6 assessing one factor of reasonableness. Defendant has provided redacted billings with this
7 Reply and unredacted ones for the Court to assess reasonableness, which Plaintiff has made
8 clear he is challenging. *See Exhibit B, attached hereto.* Additionally, Plaintiff has a pending
9 appeal, and as such, it would be inequitable for Defendant to have to reveal its full billings
10 at this stage of the appeals process. *See Docket.* As such, any complete denial of fees would
11 be inappropriate, and at most counsel would be entitled to examine the billings for
12 reasonableness of entries. *See Love v. Love, 114 Nev. 572, 582 (reversal of award and*
13 *remand to district court to allow for unsealed review); see also, Golden Rd. Motor Inn, v.*
14 *Islam, 132 Nev. Adv. Op. 49 (2016).* Accordingly, all of the factors weigh heavily in favor
15 of Defendant. *See Wynn v. Smith, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001) (citing Beattie v.*
16 *Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983)).*

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20 Accordingly, although Defendant is seeking all of its attorneys' fees incurred in the
21 litigation of this matter, pursuant to NRCP 68, it should be awarded at least an amount of
22 \$68,285.00 in attorneys' fees incurred from the time it made its rejected Offer of Judgment.

23
24 **C. Defendant is Entitled to Costs Pursuant to NRS § 18.020 and/or NRCP 68.**

25 Plaintiff did not oppose Defendant's argument that Defendant is entitled to all costs
26 incurred in this matter pursuant to NRS §18.020(3), as set forth in the underlying Motion, in
27 his Opposition hereto. Nor is there any dispute that Defendant is the prevailing party.
28



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1 Accordingly, NRS 18.020(3) dictates that Defendant should be permitted to recover its
2 costs, as it provides, in pertinent part that costs, "must be allowed of course to the prevailing
3 party against any adverse party against whom judgment is rendered, in the following
4 cases...[I]n an action for the recovery of money or damages, where the plaintiff seeks to
5 recover more than \$2,500." Therefore, as the prevailing party herein, Defendant is entitled
6 to costs pursuant to NRS §18.020, and respectfully requests an award of costs of \$11,229.33
7 in actual necessary costs in this matter.
8

9 **III. CONCLUSION**

10 Defendant respectfully requests that this Court award Defendant an additional
11 \$211,982.50 for 554.7 hours of work, or \$68,285.00, for fees and incurred after the Offer of
12 Judgment, for successfully prevailing against Plaintiff, and an additional \$11,229.33 in
13 costs.
14

15 DATED this 25th day of January, 2018.

16 **MORAN BRANDON BENDAVID MORAN**

17
18
19 /s/ Jeffery A. Bendavid, Esq.
20 **JEFFERY A. BENDAVID, ESQ.**
21 Nevada Bar No. 6220
22 **STEPHANIE J. SMITH, ESQ.**
23 Nevada Bar No. 11280
24 630 South Fourth Street
25 Las Vegas, NV 89101
26 *Attorneys for Defendant*
27
28



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Exhibit “A”

Poole v. Nevada Auto Dealership Investments LLC, et al.

Deposition of:
Derrick Poole

August 14, 2017



**WESTERN REPORTING
SERVICES, INC.**

500 South Rancho Drive, Suite 8A
Las Vegas, Nevada 89106
Telephone **702.474.6255**
Facsimile 702.474.6257

www.westernreportingservices.com

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 DERRICK POOLE,)
)
5 Plaintiff,)
)
6 vs.) Case No. A-16-737120-C
)
7)
 NEVADA AUTO DEALERSHIP)
8 INVESTMENTS LLC, a Nevada)
 Limited Liability Company d/b/a)
9 SAHARA CHRYSLER; JEEP, DODGE,)
 WELLS FARGO DEALER SERVICES)
0 INC., COREPOINTE INSURANCE)
 COMPANY; and DOES 1 through)
1 100, Inclusive,)
)
2)
 Defendant.)
3)

DEPOSITION OF DERRICK POOLE
Taken on Monday, August 14, 2017
At 9:34 a.m.
At 630 South Fourth Street
Las Vegas, Nevada

Reported by: Marnita J. Goddard, RPR, CCR No. 344

1 took a test drive. Do you recall what happened next?

2 A. During the test drive or after the test
3 drive?

4 Q. Let's go with you during the test drive.

5 A. He basically talked up the vehicle.

6 Q. Okay. Anything in particular?

7 A. Talked about the CPO, about the safety
8 inspection that's done on it.

9 Q. Were you happy with the way the vehicle
10 drove?

11 A. Yeah.

12 MR. WEST: Yes?

13 THE WITNESS: Yes. Sorry.

14 Q. (BY MS. SMITH) Did you notice any issues?

15 A. Not that I knew of, no.

16 Q. Then after the test drive was over?

17 A. During the test drive, he had mentioned that
18 it was in a minor accident.

19 Q. Okay. Anything else about that conversation
20 that you can recall?

21 A. I asked him about it, but he said it was a
22 minor accident, that it was a CPO vehicle, and there
23 was nothing to worry about.

24 Q. That was the only discussion that you had
25 about that?

1 took it to 215 Dodge for the oil change. Then they
2 did a -- what do you call it? -- alignment. Because I
3 got a really good coupon in the mail.

4 Q. Now, you just referenced some kind of issue
5 discovered by you. Can you describe to me what you're
6 talking about?

7 A. The accident before, the extent of the
8 damage of the accident, I was told there was frame
9 damage.

10 Q. Who told you that?

11 A. State Farm when I tried to refinance my
12 vehicle through State Farm.

13 Q. So at what point in time did you try and
14 refinance your vehicle?

15 A. It was last year. I don't remember. I
16 would say it was in May. I don't remember exactly
17 when.

18 Q. So approximately May of 2016?

19 A. Yes. I believe so. May have been April.

20 Q. Can you describe to me the process that you
21 went through to try and refinance your vehicle?

22 MR. WEST: Let me lodge an objection as to
23 time. Which finance, refinance?

24 Q. (BY MS. SMITH) Had you previously tried to
25 refinance your vehicle before April or May of 2016?

1 Q. Do you still have that phone?

2 A. I do. It's not with me, but I do.

3 Q. Do you think you would be able to get copies
4 of those text messages to your attorney?

5 MR. WEST: If he's got them, we'll produce
6 them.

7 THE WITNESS: If I have them.

8 Q. (BY MS. SMITH) All right. Hadn't seen
9 them.

10 Do you know what kind of phone it's on?

11 A. iPhone.

12 Q. Just wondering, because they do have the
13 magical cloud.

14 A. Everything has the cloud.

15 Q. So after you exchanged -- I don't know. How
16 many text messages with the salesperson?

17 A. I couldn't tell you. I don't know off the
18 top of my head. It was numerous ones over a couple
19 weeks.

20 Q. At some point, did you stop communicating
21 with him?

22 A. I believe he quit responding after I did the
23 AutoCheck report.

24 Q. Did you send a copy of the AutoCheck report
25 that you ran to anyone at the dealership?

1 preowned vehicle or anything to that extent?

2 A. No.

3 Q. Did you yourself ever take it in to any
4 other dealership --

5 A. No.

6 Q. -- to do a buyback?

7 A. No, ma'am.

8 Q. Have you, I'll say since the time you
9 purchased the vehicle, ever tried to sell it on your
10 own to any third parties?

11 A. No, ma'am.

12 Q. Any particular reason?

13 A. I didn't have a reason to sell it subsequent
14 to finding out about the accident of 2014.

15 Q. Okay. And then -- I'm sorry, can you
16 clarify that?

17 A. I didn't try to trade it in or sell it to
18 anybody before I found out about the accident and I
19 haven't tried to since either. So I never have. I'm
20 just making it clear that I didn't try to do it
21 beforehand or after.

22 Q. Understand. Thank you.

23 A. You are welcome.

24 Q. Have you ever missed any of your payments on
25 the vehicle?

1 Q. Okay. You think that you ran the Carfax
2 around the same time as the AutoCheck.com?

3 A. Yes.

4 Q. Do you know if you gave that to your
5 attorney?

6 A. I don't recall. I don't know if I ever
7 printed it out, to be honest with you.

8 Q. Does that get delivered by email?

9 A. I think it delivers, like, instantaneously
10 on the screen. But I haven't done a lot of them; so I
11 don't know. It's been a few years.

12 Q. Have you ran Carfaxes previously for other
13 vehicles?

14 A. Not that I recall.

15 Q. What about AutoCheck.com reports?

16 A. I had never heard of it before State Farm
17 had recommended it.

18 Q. So I think you testified that was something
19 you had to pay for?

20 A. Yes, it is.

21 Q. Can you tell me a little bit about that
22 site?

23 A. I honestly don't remember a lot about the
24 site. I guess you put in your information about the
25 vehicle and it tells you about the history.

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CERTIFICATE OF REPORTER

I, Marnita J. Goddard, CCR No. 344, a
Certified Court Reporter licensed by the State of
Nevada, do hereby certify:

That I reported the deposition of the
witness, DERRICK POOLE, commencing on Monday,
August 14, 2017, at the hour of 9:34 a.m.;

That prior to being examined, the witness was
by me first duly sworn to testify to the truth, the
whole truth, and nothing but the truth; that I
thereafter transcribed my related shorthand notes into
typewriting and that the typewritten transcript of
said deposition is a complete, true, and accurate
record of testimony provided by the witness at said
time.

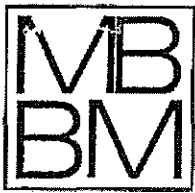
I further certify (1) that I am not a
relative or employee of an attorney or counsel of any
of the parties, nor a relative or employee of any
attorney or counsel involved in said action, nor a
person financially interested in the action, and (2)
that pursuant to NRCP 30(e), transcript review by the
witness was requested.

IN WITNESS WHEREOF, I have hereunto set my
hand in my office in the County of Clark, State of
Nevada, this 14th day of August, 2017.



Marnita J. Goddard, RPR, CCR No. 344

Exhibit “B”



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

JOHN T. MORAN, JR.
LEW BRANDON, JR.
JEFFERY A. BENDAVID
J.T. MORAN III
JUSTIN W. SMERBER

ADAMS, DAVIS
MATTHEW B. SIBERT
KRIS D. KLINGSMITH
MATTHEW D. WHITTAKER
STEPHANIE J. SMITH

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toni@saharalasvegas.net

Page
July 01, 20
Account No: 12386-001
Statement No: 1803

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
06/01/2016	JAB	Receive and review of filed Complaint by Derrick Poole (1.0).	450.00	1.00	450.00
06/02/2016	JAB	Receive and review of deal jacket from client as to Derrick Poole transaction (1.2).	450.00	1.20	540.00
06/08/2016	JAB	Receive and review of correspondence from Surety Company (.2).	450.00	0.20	90.00
06/10/2016	JAB	Review of issues raised by George West (.5).	450.00	0.50	225.00
	JAB	Telephone call with George West (.3).	450.00	0.30	135.00
06/14/2016	JAB	Receive and review of correspondence and tender letter for surety Bond Holder (.2).	450.00	0.20	90.00
06/16/2016	JAB	Receive and review of demand for tender to surety bond (.3).	450.00	0.30	135.00
06/17/2016	JAB	Exchange email communication with George West (.3).	450.00	0.30	135.00
	JAB	[REDACTED] (.4).	450.00	0.40	180.00
06/20/2016	JAB	Receive and review of proposed Stipulation and Order for Arbitration and receive of numerous issues raised by George West (.8).	450.00	0.80	360.00
06/21/2016	JAB	Telephone call with Brian Terry (.3).	450.00	0.30	135.00
	JAB	[REDACTED] (.8).	450.00	0.80	360.00
	JAB	Telephone call with George West (.4).	450.00	0.40	180.00
06/22/2016	JAB	Exchange email communication with Brian Terry and preparation of package of documents to Brian Terry (.6).	450.00	0.60	270.00
	JAB	[REDACTED] (.8).	450.00	0.80	360.00
06/27/2016	JAB	Receive and review of information for Bond Company (.2).	450.00	0.20	90.00
06/28/2016	JAB	Receive and review of update request from [REDACTED] (.1).	450.00	0.10	45.00
				<u>8.40</u>	<u>3,780.00</u>

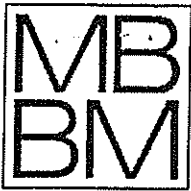
Sahara Chrysler Jeep Dodge adv. Derrick Poole

Total amount of this bill

3,780.00

Please Remit Balance Due

\$3,780.00



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toni@saharalasvegas.net

Page
August 02, 20
Account No: 12386-005
Statement No: 1807

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
07/05/2016	JAB	Exchange numerous emails with George West (.4).	450.00	0.40	180.00
	JAB	[REDACTED] (.2).	450.00	0.20	90.00
	JAB	[REDACTED] (.5).	450.00	0.50	225.00
07/07/2016	JAB	Exchange email communications with counsel (.2).	450.00	0.20	90.00
	JAB	[REDACTED] (.4).	450.00	0.40	180.00
07/08/2016	JAB	Exchange email communication with counsel (.3).	450.00	0.30	135.00
07/11/2016	JAB	Exchange email communication with George West and Brian Terry (.3).	450.00	0.30	135.00
	JAB	Receive and review of correspondence from counsel to Wells Fargo (.1).	450.00	0.10	45.00
07/12/2016	JAB	Exchange email communication with Daniel Payne and receive of update request from George West (.3).	450.00	0.30	135.00
	JAB	[REDACTED] (.3).	450.00	0.30	135.00
07/17/2016	JAB	Exchange email communications with Daniel Payne and George West (.3).	450.00	0.30	135.00
07/19/2016	JAB	Receive and review of updates to inspections (.2).	450.00	0.20	90.00
07/23/2016	JAB	Exchange email communications with counsel (.2).	450.00	0.20	90.00
07/26/2016	JAB	Exchange numerous emails with parties (.3).	450.00	0.30	135.00
	JAB	Telephone call with Norton Kaunte and Wells Fargo (.3).	450.00	0.30	135.00
	JAB	Exchange additional email communication with counsel (.2).	450.00	0.20	90.00
	JAB	Receive and review of numerous email communications between George West and Brian Terry (.3).	450.00	0.30	135.00
				4.80	2,160.00

Sahara Chrysler Jeep Dodge adv. Derrick Poole

Total amount of this bill	2,160.00
Previous Balance	\$3,780.00
Please Remit Balance Due	<u>\$5,940.00</u>



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Page: September 01, 2016
Account No: 12386-005
Statement No: 18101

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
08/01/2016	JAB	Receive and review of numerous email communications between George West and Brian Terry (.3).	450.00	0.30	135.00
	JAB	Review of Stipulation and proposed issues of inspection of vehicle (.5).	450.00	0.50	225.00
	JAB	Review of draft and signed Stipulation of all parties and review of additional communications between parties (.4).	450.00	0.40	180.00
08/03/2016	JAB	[REDACTED] (.2).	450.00	0.20	90.00
08/25/2016	JAB	Exchange email communications with Brian Terry regarding status (.3).	450.00	0.30	135.00
	JAB	Receive and review of numerous email communications between the parties (.4).	450.00	0.40	180.00
08/26/2016	JAB	Telephone call with Brian Terry (.2).	450.00	0.20	90.00
				2.30	1,035.00
		Total amount of this bill			1,035.00
		Previous Balance			\$5,940.00
		Please Remit Balance Due			<u>\$6,975.00</u>



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Page: October 05, 2016
Account No: 12386-005
Statement No: 18147

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
08/31/2016	JAB	Receive and review of Answer to Complaint filed by Wells Fargo (.4).	450.00	0.40	180.0
	JAB	Receive and review of Answer filed by Nevada Auto Dealerships Investments (.6).	450.00	0.60	270.0
09/06/2016	JAB	Exchange email communications with counsel (.3).	450.00	0.30	135.0
	JAB	Receive and review of Notice of Entry Case Conference (.2).	450.00	0.20	90.0
09/07/2016	JAB	Review of numerous email communication with counsel (.2).	450.00	0.20	90.0
	JAB	Exchange email communication with all counsel (.3).	450.00	0.30	135.0
	JAB	Receive and review of revised Notice of Early Case Conference (.3).	450.00	0.30	135.0
				2.30	1,035.0
		Total amount of this bill			1,035.0
		Previous Balance			\$6,975.0
		<u>Payments</u>			
09/14/2016		Payment ck#120472			-5,940.0
		Please Remit Balance Due			<u>\$2,070.0</u>



MORAN BRANDON
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Page:
November 03, 2016
Account No: 12386-005
Statement No: 18194

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
09/29/2016	JAB	Receive and review of demand from Wells Fargo (.3).	450.00	0.30	135.0
09/30/2016	JAB	[REDACTED] (1.4).	450.00	1.40	630.0
10/03/2016	JAB	Receive and review of Wells Fargo Initial Disclosures Pursuant to NRCP 16.1 (1.5).	450.00	1.50	675.0
	JAB	Review of issue raised by Wells Fargo and related matters (.8).	450.00	0.80	360.0
10/07/2016	JAB	[REDACTED] (.8).	450.00	0.80	360.0
10/14/2016	JAB	Receive and review of Initial Discovery Requests Including Requests for Production of Documents; Requests for Admissions; and Requests for Interrogatories (1.5).	450.00	1.50	675.0
10/15/2016	JAB	Receive and review of service of Plaintiff's First Set of Written Discovery; Written Interrogatories; and Written Requests for Production of Documents (1.6).	450.00	1.60	720.0
	JAB	Receive and review of Notice of 30 (b)(6) Notice (.8).	450.00	0.80	360.0
10/17/2016	JAB	Receive and review of Joint Case Conference Report (.3);	450.00	0.30	135.0
	JAB	Continue with review of proposed written Discovery from Plaintiff including Interrogatories; Request for Production of Documents; and Request for Admissions (1.6).	450.00	1.60	720.0
10/18/2016	JAB	Review of 30(b)(6) deposition notice (.8).	450.00	0.80	360.0
				11.40	5,130.0
		Total amount of this bill			5,130.0
		Previous Balance			\$2,070.0
		Please Remit Balance Due			<u>\$7,200.0</u>



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Page:
December 02, 2016
Account No: 12386-005
Statement No: 18226

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
11/02/2016	JAB	Review of [REDACTED] (1.2).	450.00	1.20	540.00
11/04/2016	JAB	Review of [REDACTED] (.4).	450.00	0.40	180.00
	JAB	Review of [REDACTED] (.4).	450.00	0.40	180.00
11/07/2016	JAB	Receive and review of written discovery by Plaintiff (.8).	450.00	0.80	360.00
	JAB	Receive and review of Plaintiff's Responses to Defendant's Requests for Admissions (.8).	450.00	0.80	360.00
	JAB	Receive and review of Plaintiff's First Request for Production of Documents to Wells Fargo (.8).	450.00	0.80	360.00
11/10/2016	JAB	Receive and review of Plaintiff's First Supplement to NRCP 16.1 disclosures (.4).	450.00	0.40	180.00
	JAB	Receive and review of Plaintiff's Second set of Interrogatories to Defendant Sahara Chrysler Jeep Dodge (.3).	450.00	0.30	135.00
	JAB	Receive and review of Plaintiff's Second Request for Production of Documents (.2).	450.00	0.20	90.00
11/11/2016	JAB	Receive and review of Plaintiff's Third Request for Production of Documents (.4).	450.00	0.40	180.00
	JAB	Receive and review of Plaintiff's Response to Requests for Production of Documents (.6).	450.00	0.60	270.00
11/14/2016	JAB	Receive and review of First Amended 30(b)(6) Notice and Notice of Taking Deposition (.3).	450.00	0.30	135.00
	JAB	Receive and review of Plaintiff's Response to Defendant's First Set of Interrogatories (.8).	450.00	0.80	360.00
11/16/2016	JAB	Receive and review of Defendant's Responses to Plaintiff's First Set of Requests for Production of Documents (1.0).	450.00	1.00	450.00
	JAB	Review of 30(b)(6) Notice on topics for depositions (.5).	450.00	0.50	225.00

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
11/17/2016	JAB	Receive and review of Defendant's Responses to Plaintiff's First Set of Interrogatories (.4).	450.00	0.40	180.0
	JAB	Receive and review of First Amended Notice of Taking Deposition and Second Notice of Taking 30(b)(6) deposition (.2).	450.00	0.20	90.0
11/23/2016	JAB	Receive and review of Defendant's Second Supplemental Disclosure of documents pursuant to NRCP 16.1 (1.0).	450.00	1.00	450.0
				10.50	4,725.0
		Total amount of this bill			4,725.0
		Previous Balance			\$7,200.0
		Please Remit Balance Due			<u>\$11,925.0</u>



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toni@saharalasvegas.net

Page: January 04, 20
Account No: 12386-006
Statement No: 1826

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
12/06/2016	JAB	Receive and review of Scheduling Order (.2).	450.00	0.20	90.0
12/09/2016	JAB	Receive and review of Wells Fargo's Response to Plaintiff's First Requests for Production of Documents (.6).	450.00	0.60	270.0
	JAB	Receive and review of Third Supplemental Disclosures Pursuant to NRCP 16.1 (.8).	450.00	0.80	360.0
12/12/2016	JAB	Receive and review of Plaintiff's Second Supplemental Disclosures of Documents (1.0).	450.00	1.00	450.0
12/14/2016	JAB	Receive and review of Subpoena Duces Tecum for Production of Records (.6).	450.00	0.60	270.0
				3.20	1,440.0
		Total amount of this bill			1,440.0
		Previous Balance			\$11,925.0
		<u>Payments</u>			
12/30/2016		Payment ck#122157			-11,925.0
		Please Remit Balance Due			<u>\$1,440.0</u>



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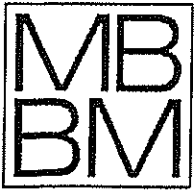
ADAM S. DAVIS
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toni@saharalasvegas.net

Page:
February 01, 2017
Account No: 12386-005
Statement No: 18304

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
12/29/2016	JAB	Receive and review of Defendant's Fourth Supplemental Disclosures (.4).	450.00	0.40	180.0
01/05/2017	JAB	Receive and review of Defendant's Second set of Requests for Production of Documents (.4).	450.00	0.40	180.0
	JAB	Receive and review of Defendant's Second Set of Interrogatories (.6).	450.00	0.60	270.0
01/17/2017	JAB	Receive and review of Plaintiff's Fourth Supplemental Disclosure of Documents and Witnesses pursuant to 16.1 (1.2).	450.00	1.20	540.0
01/23/2017	JAB	Receive and review of Notice of Taking Depositions (.2).	450.00	0.20	90.0
01/26/2017	JAB	Receive and review of Order Setting Civil Jury Trial (.3).	450.00	0.30	135.0
				3.10	1,395.0
		Total amount of this bill			1,395.0
		Previous Balance			\$1,440.0
		Please Remit Balance Due			<u>\$2,835.0</u>



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Page: March 03, 2017
Account No: 12386-005
Statement No: 18342

Sahara Chrysler Jeep Dodge adv. Derrick Poole

Previous Balance

\$2,835.00

Payments

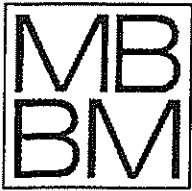
02/17/2017

Payment ck#122769

-1,440.00

Please Remit Balance Due

\$1,395.00



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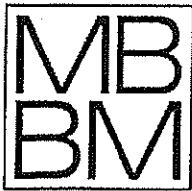
ATTN: Toni Naidoo
toni@saharalasvegas.net

Page:
April 04, 2017

Account No: 12386-005
Statement No: 18396

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
03/17/2017	JAB	Receive and review of Notice of Vacating Deposition (.2).	450.00	0.20	90.00
	JAB	Receive and review of Plaintiff's Motion to Amend Complaint adding additional Causes of Action and related matters (1.5).	450.00	1.50	675.00
03/21/2017	JAB	Review [REDACTED] (.8).	450.00	0.80	360.00
03/29/2017	JAB	Receive and review of Non Opposition to Motion to Amend (.2).	450.00	0.20	90.00
				2.70	1,215.00
		Total amount of this bill			1,215.00
		Previous Balance			\$1,395.00
		<u>Payments</u>			
03/09/2017		Payment ck#123057			-1,395.00
		Please Remit Balance Due			<u>\$1,215.00</u>



MORAN BRANDON
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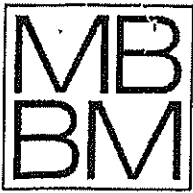
ADAM S. DAVIS
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Page:
May 01, 2017
Account No: 12386-005
Statement No: 18441

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
04/03/2017	JAB	Receive and review of Non Opposition to Plaintiff's Motion to Amend (.2).	450.00	0.20	90.0
04/18/2017	JAB	Receive and review of Order GRanting Motion to Amend (.2).	450.00	0.20	90.0
				0.40	180.0
		Total amount of this bill			180.0
		Previous Balance			\$1,215.0
		<u>Payments</u>			
04/17/2017		Payment ck#123638			-1,215.0
		Please Remit Balance Due			<u>\$180.0</u>



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toni@saharalasvegas.net

Page: June 05, 20
Account No: 12386-005
Statement No: 1848

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			Rate	Hours	
05/08/2017	JAB	Receive and review of Plaintiff's Supplemental Responses to First Set of Interrogatories (.8).	450.00	0.80	360.0
05/18/2017	JAB	Receive and review of Plaintiff's Fifth Supplemental Disclosure (1.2).	450.00	1.20	540.0
05/23/2017	JAB	[REDACTED] 1).	450.00	0.10	45.0
	JAB	Review of issues raised by counsel (.6).	450.00	0.60	270.0
05/24/2017	JAB	Telephone call with Brian Terry (.2).	450.00	0.20	90.0
05/25/2017	JAB	Review [REDACTED] (.6).	450.00	0.60	270.0
	JAB	[REDACTED] (.8).	450.00	0.80	360.0
	JAB	[REDACTED] (.4).	450.00	0.40	180.0
05/30/2017	SJS	Review stipulation [REDACTED]	350.00	0.60	210.0
	JAB	Receive and review of documents from Brian Terry and request for status (.8)	450.00	0.80	360.0
	JAB	[REDACTED] 1.5).	450.00	1.50	675.0
05/31/2017	JAB	Exchange email communication with counsel and client (.3).	450.00	0.30	135.0
	JAB	Receive and review of correspondence from Brian Terry with Substitution of Attorney (.2).	450.00	0.20	90.0
				8.10	3,585.0
		Total amount of this bill			3,585.0
		Previous Balance			\$180.0

Payments

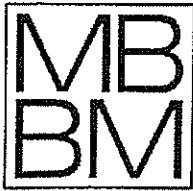
06/01/2017 Payment ck#124426 -180.0

Account No: 12386-005
Statement No: 18489

Sahara Chrysler Jeep Dodge adv. Derrick Poole

Please Remit Balance Due

\$3,585.00



MORAN BRANDON
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STEPHANIE J. SMITH

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toni@saharalasvegas.net

Page:
June 29, 2017
Account No: 12386-005
Statement No: 18516

Sahara Chrysler Jeep Dodge adv. Derrick Poole

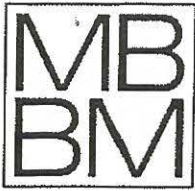
			<u>Rate</u>	<u>Hours</u>	
06/02/2017	JAB	Receive and review of correspondence for counsel (.2).	450.00	0.20	90.0
	JAB	Review of correspondence for counsel (.2).	450.00	0.20	90.0
06/05/2017	JAB	Exchange email communication with Brian Terry (.3).	450.00	0.30	135.0
	JAB	[REDACTED] (.3).	450.00	0.30	135.0
	JAB	[REDACTED] (.8).	450.00	0.80	360.0
06/07/2017	SJS	Attend telephone call with Wells Fargo counsel RE: [REDACTED]			
	SJS	[REDACTED]	350.00	0.20	70.0
	JAB	Receive and review of complete file for Brian Terry (1.0).	350.00	0.20	70.0
	JAB	Telephone call with to Nathan Kanute counsel for Wells Fargo (.3).	450.00	1.00	450.0
	JAB	Review of pending matters and review [REDACTED] (1.2).	450.00	0.30	135.0
			450.00	1.20	540.0
06/08/2017	JAB	Review of [REDACTED] (.8).	450.00	0.80	360.0
06/09/2017	JAB	Review of issue of experts due. Experts report of related matter (1.0).	450.00	1.00	450.0
06/12/2017	JAB	Receive and review of plaintiff's initial expert disclosure (1.5).	450.00	1.50	675.0
	JAB	[REDACTED] (1.6).	450.00	1.60	720.0
06/13/2017	SJS	Telephone call with B. Terry RE: [REDACTED]	350.00	0.20	70.0
	SJS	Exchange emails with B. Terry RE: [REDACTED]	350.00	0.30	105.0
	SJS	Review docket for FAC and additional filings.	350.00	0.40	140.0
	SJS	Review FAC.	350.00	0.30	105.0
	SJS	Review of documents from previous counsel for conference call.	350.00	0.70	245.0
	JAB	Receive and review of photos for plaintiff's expert report and related matter (.8).	450.00	0.80	360.0
	JAB	Continue with review of plaintiff's expert report (1.0)	450.00	1.00	450.0
06/14/2017	JAB	Receive and review for complete set of photos for plaintiff's expert (.8).	450.00	0.80	360.0

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
	JAB	[REDACTED] (1.2).	450.00	1.20	540.00
	JAB	Receive and review of correspondence for Wells Fargo counsel (.2).	450.00	0.20	90.00
	JAB	Receive and review of Wells Fargo's joinder to expert report (.3).	450.00	0.30	135.00
06/15/2017	SJS	Review of Plaintiff's expert disclosure and report.	350.00	0.60	210.00
06/19/2017	SJS	[REDACTED]	350.00	0.30	105.00
	SJS	[REDACTED]	350.00	0.20	70.00
06/23/2017	JAB	Review of deal for Wells Fargo (.6).	450.00	0.60	270.00
	JAB	[REDACTED] (1.2).	450.00	1.20	540.00
06/26/2017	JAB	[REDACTED] (.2).	450.00	0.20	90.00
06/27/2017	SJS	[REDACTED]	350.00	0.10	35.00
				<u>19.00</u>	<u>8,200.00</u>

Expenses

06/14/2017	Photocopy charges	1.3
	Total Expenses	1.3
	Total amount of this bill	8,201.3
	Previous Balance	\$3,585.0
	Please Remit Balance Due	<u>\$11,786.3</u>



MORAN BRANDON
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Page: August 01, 2017
Account No: 12386-005
Statement No: 18566

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			Rate	Hours	
07/03/2017	JAB	Receive and review of notices of taking deposition (.4).	450.00	0.40	180.0
07/05/2017	SJS	Telephone call with expert office RE:: rebuttal deadline.	350.00	0.20	70.0
	JAB	Exchange email communication with George West (.2).	450.00	0.20	90.0
07/07/2017	SJS	Supplemental review of plaintiffs' expert report.	350.00	0.90	315.0
	JAB	Receive and review of Plaintiff's second set of interrogatories (1.4).	450.00	1.40	630.0
	JAB	Receive and review of Plaintiff's fourth request for production of drafts (.4).	450.00	0.40	180.0
	JAB	Receive and review of Plaintiff's first set of request for admissions (1.0).	450.00	1.00	450.0
07/10/2017	SJS	[REDACTED]	350.00	0.20	70.0
07/11/2017	SJS	[REDACTED]	350.00	0.10	35.0
07/12/2017	SJS	Review [REDACTED]	350.00	1.10	385.0
	SJS	[REDACTED]	350.00	0.30	105.0
	SJS	Review of documents to send to expert [REDACTED]	350.00	1.10	385.0
	SJS	Draft correspondence to client RE:: [REDACTED]	350.00	0.20	70.0
	SJS	Review discovery responses and objections.	350.00	0.90	315.0
	SJS	Review deposition notices.	350.00	0.20	70.0
	SJS	[REDACTED]	350.00	0.30	105.0
	SJS	[REDACTED]	350.00	0.90	315.0
	JAB	Receive and review of [REDACTED] (1.2).	450.00	1.20	540.0
	JAB	Exchange email communication with George West (.2).	450.00	0.20	90.0
07/13/2017	SJS	[REDACTED]	350.00	0.30	105.0
	SJS	Telephone call with B. Terry office RE:: [REDACTED]	350.00	0.30	105.0
	SJS	Review Person Most Knowledgeable deposition transcript.	350.00	1.10	385.0
	SJS	[REDACTED]	350.00	0.20	70.0
	JAB	Draft letter to client (.2).	450.00	0.20	90.0

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
	JAB	Begin drafting of Answer to Plaintiff's First Amended Complaint (1.6).	450.00	1.60	720.00
	JAB	Begin researching of [REDACTED] (1.4).	450.00	1.40	630.00
	JAB	Exchange email communications with George West (.3).	450.00	0.30	135.00
	JAB	Review of documents needed for expert review (1.4).	450.00	1.40	630.00
	JAB	Review of additional expert issues for Rebuttal Expert Disclosure (.8).	450.00	0.80	360.00
07/14/2017	SJS	[REDACTED]	350.00	0.90	315.00
	SJS	[REDACTED]	350.00	0.30	105.00
	SJS	[REDACTED]	350.00	0.40	140.00
	SJS	[REDACTED]	350.00	0.20	70.00
	SJS	Supplemental deposition testimony review.	350.00	0.40	140.00
	SJS	Review finalized pleading for service.	350.00	0.20	70.00
	SJS	[REDACTED]	350.00	0.60	210.00
	JAB	[REDACTED] (1.0).	450.00	1.00	450.00
	JAB	Receive and review of Amended Notices of Taking Depositions and email communication with George West (.4).	450.00	0.40	180.00
07/17/2017	SJS	Review of responses provided by Poole to previous discovery.	350.00	1.40	490.00
	JAB	Receive and review of correspondence from insurance company (.1).	450.00	0.10	45.00
	JAB	[REDACTED] (.8).	450.00	0.80	360.00
07/18/2017	JAB	Review edit of Answer to First Amended Complaint and Affirmative Defenses (1.6).	450.00	1.60	720.00
07/19/2017	SJS	[REDACTED]	350.00	1.80	630.00
	SJS	Review of production and deposition testimony to prepare responses.	350.00	1.70	595.00
	SJS	Draft deposition notices for plaintiff and plaintiff expert depositions.	350.00	0.50	175.00
	SJS	Exchange emails with T. Naidoo RE: [REDACTED]	350.00	0.20	70.00
	SJS	Draft correspondence to D. Poole RE: status.	350.00	0.30	105.00
	SJS	[REDACTED]	350.00	0.30	105.00
	SJS	[REDACTED]	350.00	0.90	315.00
	JAB	Review of Notices of Taking Depositions (.3).	450.00	0.30	135.00
	JAB	Exchange email communication with George West (.2).	450.00	0.20	90.00
07/20/2017	SJS	Draft email to G. West RE: discovery.	350.00	0.10	35.00
	SJS	Review email exchange with G. West.	350.00	0.50	175.00
	SJS	Review notices regarding document service from plaintiffs.	350.00	0.40	140.00
	SJS	Review supplemental document production and responses from plaintiffs.	350.00	1.40	490.00
	SJS	Supplemental drafting of [REDACTED]	350.00	1.40	490.00

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
	JAB	Review of issues raised by George West (.4).	450.00	0.40	180.0
07/21/2017	SJS	Review emails from G. West.	350.00	0.30	105.0
	JAB	Exchange numerous emails with George West (.3).	450.00	0.30	135.0
	JAB	Review of noticed deposition dates (.3).	450.00	0.30	135.0
	JAB	Review of issues with current depositions needed (.5).	450.00	0.50	225.0
07/24/2017	JAB	Review, edit and revise [REDACTED] (1.0).	450.00	1.00	450.0
	JAB	Review of issues with remaining discovery responses needed (.8).	450.00	0.80	360.0
07/25/2017	SJS	[REDACTED]	350.00	2.10	735.0
	SJS	[REDACTED]	350.00	1.40	490.0
07/26/2017	JAB	[REDACTED] (1.4).	450.00	1.40	630.0
	JAB	[REDACTED] (.5).	450.00	0.50	225.0
				<u>46.10</u>	<u>18,145.0</u>
		Total amount of this bill			18,145.0
		Previous Balance			\$11,786.3
		Please Remit Balance Due			<u>\$29,931.3</u>



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Page:
September 06, 2017
Account No: 12386-005
Statement No: 18620

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			Rate	Hours	
07/27/2017	SJS	[REDACTED]	350.00	0.20	70.00
	SJS	Draft responses to request for production.	350.00	0.80	280.00
	SJS	Supplemental review of plaintiff's discovery responses.	350.00	1.80	630.00
07/28/2017	SJS	Review previous responses and objections to requests for production.	350.00	1.20	420.00
	SJS	Research and analysis of [REDACTED]	350.00	1.40	490.00
07/31/2017	JC	Research and review [REDACTED]	175.00	1.90	332.50
	SJS	Research and review additional [REDACTED]	350.00	1.80	630.00
08/01/2017	SJS	[REDACTED]	350.00	1.60	560.00
	SJS	[REDACTED]	350.00	0.80	280.00
	JAB	Review of all finalize discovery responses to requests for admissions; second set of interrogatories; and request for production of duties (1.2).	450.00	1.20	540.00
08/02/2017	SJS	Telephone call with T. Naidoo.	350.00	0.20	70.00
	SJS	Review email from T. Naidoo.	350.00	0.10	35.00
	SJS	Review notices for discovery.	350.00	0.30	105.00
	SJS	Review verification.	350.00	0.10	35.00
	JAB	Exchange email communication with George West (.3).	450.00	0.30	135.00
08/03/2017	JAB	Receive and review of Well Fargo's emails for tender of defense and Indemnity (.8).	450.00	0.80	360.00
08/04/2017	JAB	Exchange email communication with George West (.3).	450.00	0.30	135.00
	JAB	Continue email communication exchange with counsel (.2).	450.00	0.20	90.00
08/07/2017	SJS	[REDACTED]	350.00	0.70	245.00
	JAB	Attend 2.34 conference with George West on discovery dispute (1.1).	450.00	1.10	495.00

			<u>Rate</u>	<u>Hours</u>	
	SJS	Review emails from G. West RE: electronic service and Request for Admissions.	350.00	0.20	70.0
	JAB	Review of discovery issues in dispute with review of transcript of PMK deposition (.8).	450.00	0.80	360.0
08/08/2017	SJS	Review association of counsel.	350.00	0.10	35.0
	JAB	Receive and review of notice of association (.2).	450.00	0.20	90.0
	SJS	Review notice of association of counsel and review counsel information.	350.00	0.20	70.0
08/09/2017	JAB	Review of discovery issues raised by George West (.8).	450.00	0.80	360.0
	JAB	Draft email communication to George West (.2).	450.00	0.20	90.0
	JAB	[REDACTED] (.8).	450.00	0.80	360.0
	SJS	[REDACTED]	350.00	0.60	210.0
	SJS	[REDACTED]	350.00	0.40	140.0
08/10/2017	SJS	Revise responses to requests for admission.	350.00	0.40	140.0
08/11/2017	JAB	Exchange email communication with George West (.2).	450.00	0.20	90.0
	JAB	Review of numerous issues with upcoming deposition of Poole (.8).	450.00	0.80	360.0
	JAB	Telephone call with George West (.3).	450.00	0.30	135.0
	JAB	Review of numerous email communication between the parties (.3).	450.00	0.30	135.0
	SJS	Review documents in preparation for D. Poole deposition.	350.00	1.90	665.0
	SJS	Review deposition questions for D. Poole.	350.00	0.70	245.0
	SJS	[REDACTED]	350.00	1.60	560.0
	JAB	Review of testimony from parties (.3).	450.00	0.30	135.0
08/13/2017	SJS	Review Plaintiff's sixth supplement and sixth supplement corrected filings and notices.	350.00	0.40	140.0
	SJS	Supplement Poole deposition outline.	350.00	0.80	280.0
	SJS	Review notice of deposition served by Poole.	350.00	0.20	70.0
08/14/2017	SJS	[REDACTED]	350.00	0.20	70.0
	SJS	Supplemental preparation for deposition of D. Poole.	350.00	0.40	140.0
	SJS	[REDACTED]	350.00	0.30	105.0
	JAB	Receive and review of notice of taking deposition (.3).	450.00	0.30	135.0
	JAB	Review of numerous issues with deposition of plaintiff (.8).	450.00	0.80	360.0
	JAB	Finalize notices of taking depositions and subpoena to initial-party (.3).	450.00	0.30	135.0
	SJS	Take deposition of D. Poole.	350.00	3.20	1,120.0
	SJS	Review supplemental 16.1 by plaintiff, and corrected supplemental 16.1	350.00	0.30	105.0
	SJS	[REDACTED]	350.00	0.20	70.0
	SJS	Draft subpoena and deposition notice to serve on D. Hinton.	350.00	0.40	140.0

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			Rate	Hours	
	SJS	[REDACTED]	350.00	0.40	140.00
	JAB	Receive and review of plaintiff's sixth supplement (.3).	450.00	0.30	135.00
08/15/2017	SJS	Draft meet and confer correspondence to G. West.	350.00	0.40	140.00
	JAB	Review, edit of revise of objective to plaintiff's deposition notice (.3).	450.00	0.30	135.00
	JAB	[REDACTED] (.2).	450.00	0.20	90.00
	JAB	[REDACTED] (.2).	450.00	0.20	90.00
	JAB	Exchange email communication with George West (.3).	450.00	0.30	135.00
	SJS	[REDACTED]	350.00	0.30	105.00
	SJS	[REDACTED]	350.00	0.20	70.00
	SJS	[REDACTED]	350.00	0.50	175.00
08/16/2017	SJS	Exchange emails [REDACTED]	350.00	0.20	70.00
	SJS	Review emails regarding 2.34 and discovery dispute.	350.00	0.30	105.00
	SJS	Telephone call [REDACTED]	350.00	0.20	70.00
	SJS	Email to [REDACTED]	350.00	0.20	70.00
	SJS	Exchange email with N. Grant.	350.00	0.20	70.00
	JAB	Review, edit and revise of amended supplement responses to request for admissions (.4).	450.00	0.40	180.00
	JAB	Exchange email communication with George West (.2).	450.00	0.20	90.00
	JAB	Exchange numerous email iwth George West (.3).	450.00	0.30	135.00
	SJS	Review email from G. West.	350.00	0.10	35.00
	SJS	[REDACTED]	350.00	0.40	140.00
	JAB	Review, edit and finalize answer to amended compliant (.8).	450.00	0.80	360.00
08/17/2017	SJS	Draft response to N. Grant RE:: [REDACTED]	350.00	0.10	35.00
	JAB	Conference call with George West (.4).	450.00	0.40	180.00
	JAB	Exchange email communication with George West (.3).	450.00	0.30	135.00
	SJS	Amend request for admissions responses.	350.00	0.40	140.00
	SJS	[REDACTED]	350.00	0.30	105.00
	SJS	[REDACTED]	350.00	0.30	105.00
	SJS	[REDACTED]	350.00	0.30	105.00
	SJS	[REDACTED]	350.00	1.80	630.00
	SJS	[REDACTED]	350.00	0.40	140.00
	JAB	Receive and review of Wells Fargo dealer services answers to first amended complaint (.5).	450.00	0.50	225.00
08/18/2017	SJS	Draft continued deposition notice.	350.00	0.30	105.00
	SJS	[REDACTED]	350.00	1.60	560.00
	SJS	Review service of amended responses to requests for admissions.	350.00	0.10	35.00
	SJS	Review emails from G. West RE:: status and continuance of depositions.	350.00	0.20	70.00

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
	JAB	Receive and review of information of issues raised by George West (.3).	450.00	0.30	135.00
	JAB	[REDACTED] (.3).	450.00	0.30	135.00
	SJS	Review served amended responses to Requests for Admissions.	350.00	0.10	35.00
08/21/2017	SJS	Serve continued deposition notice for expert deposition.	350.00	0.20	70.00
	SJS	Telephone call RE:: transcript of depo.	350.00	0.10	35.00
	SJS	Review previous disclosures and prepare 5th supplemental disclosure of documents and witnesses.	350.00	1.50	525.00
	SJS	Supplemental research [REDACTED]	350.00	1.30	455.00
	JAB	Receive and review of email communication of George West (.3).	450.00	0.30	135.00
	JAB	Review of issues related to possible settlement of all claims (.8).	450.00	0.80	360.00
	SJS	Review email from G. West RE:: Scheduling.	350.00	0.10	35.00
08/22/2017	SJS	[REDACTED]	350.00	2.10	735.00
	SJS	[REDACTED]	350.00	0.40	140.00
	SJS	[REDACTED]	350.00	1.60	560.00
	SJS	Telephone call [REDACTED]	350.00	0.20	70.00
	SJS	Supplemental edit RE:: 5th supplemental disclosure.	350.00	0.40	140.00
	JAB	Review, edit and review of NRCP 16.1 First Supplement of discloser of draft (1.0).	450.00	1.00	450.00
	JAB	Receive and review of second amended notice of talking deposition (.3).	450.00	0.30	135.00
08/23/2017	SJS	Review second amended notice of deposition from plaintiff.	350.00	0.20	70.00
	JAB	[REDACTED] (.8).	450.00	0.80	360.00
	JAB	Exchange email communication with George West (.3).	450.00	0.30	135.00
08/24/2017	SJS	Review D. Poole deposition.	350.00	0.40	140.00
	SJS	Exchange emails with court reporter RE:: transcript delivery.	350.00	0.30	105.00
	SJS	Review plaintiff's 7th supplement.	350.00	0.60	210.00
	JAB	Receive and review of plaintiff's seventh supplement to NRCP 16.1 disclosure (.7).	450.00	0.70	315.00
	JAB	Exchange email communication with counsel (.3).	450.00	0.30	135.00
08/25/2017	JAB	[REDACTED] (.8).	450.00	0.80	360.00
	JAB	[REDACTED] (.8).	450.00	0.80	360.00
	JAB	Conference call with George West regarding resolution (.4).	450.00	0.40	180.00
08/28/2017	JAB	Exchange email communication with George West (.2).	450.00	0.20	90.00
	JAB	Receive and review of information for counsel (.3).	450.00	0.30	135.00
08/29/2017	JAB	Exchange numerous emails with counsel (.3).	450.00	0.30	135.00

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		<u>Rate</u>	<u>Hours</u>	
	JAB Exchange email communication with counsel (.2).	450.00	0.20	90.0
	JAB [REDACTED] (.3).	450.00	0.30	135.0
08/30/2017	JAB [REDACTED] (.8).	450.00	0.80	360.0
	JAB Exchange email with George West regarding settlement talk (.20).	450.00	0.20	90.0
			67.70	25,722.5

Expenses

07/31/2017	Lexis/ Nexis	29.4
08/15/2017	Wreck Check Car Scan Centers	
	Deposition of Expert - One Hour Initial Payment (mlf)	350.0
08/16/2017	Clark County Clerk	
	1366034 Answer to First Amended Complaint (mlf)	3.5
08/25/2017	Lawyers Process Service	
	Invoice # 43701	125.0
	Total Expenses	507.9
	Total amount of this bill	26,230.4
	Previous Balance	\$29,931.3

Payments

08/25/2017	Payment ck#125988	-11,786.3
09/01/2017	Payment ck#126057	-18,145.0
	Total Payments	-29,931.3
	Please Remit Balance Due	\$26,230.4



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Page:
October 03, 2017
Account No: 12386-005
Statement No: 18661

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			<u>Rate</u>	<u>Hours</u>	
09/01/2017	SJS	Review upcoming deadlines.	350.00	0.30	105.00
09/05/2017	SJS	[REDACTED]	350.00	0.40	140.00
	SJS	Exchange emails with G. West RE:: deposition scheduling.	350.00	0.20	70.00
	JAB	[REDACTED] (.40).	450.00	0.40	180.00
	JAB	Conference call with George West regarding settlement (.5).	450.00	0.50	225.00
	JAB	Exchange numerous email communication between the parties (.5).	450.00	0.50	225.00
	JAB	[REDACTED]			
		[REDACTED] (.4).	450.00	0.40	180.00
	JAB	Review of numerous email exchange between the parties (.3).	450.00	0.30	135.00
09/06/2017	SJS	Exchange emails with G. West RE:: scheduling.	350.00	1.10	385.00
	SJS	[REDACTED]	350.00	0.40	140.00
	SJS	[REDACTED]	350.00	0.90	315.00
	SJS	[REDACTED]	350.00	1.60	560.00
	SJS	[REDACTED]	350.00	1.80	630.00
09/07/2017	SJS	Exchange emails with G. West RE:: depositions.	350.00	0.40	140.00
	SJS	Review amended deposition notice.	350.00	0.20	70.00
	SJS	[REDACTED]	350.00	0.20	70.00
	SJS	Draft motion for protective order.	350.00	2.30	805.00
	SJS	[REDACTED]			
		[REDACTED]	350.00	1.30	455.00
	SJS	[REDACTED]	350.00	1.60	560.00
	JAB	Review, edit and revise of motion for protective order on order shortening (1.0).	450.00	1.00	450.00
	JAB	Review of exhibits for motion for protective order (.6).	450.00	0.60	270.00
09/08/2017	SJS	Review amended deposition notice.	350.00	0.20	70.00
	SJS	[REDACTED]	350.00	0.20	70.00
	SJS	[REDACTED]	350.00	0.20	70.00
09/11/2017	SJS	[REDACTED] :: [REDACTED]	350.00	0.10	35.00
	SJS	[REDACTED]	350.00	0.30	105.00

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			Rate	Hours	
	SJS	Telephone call with N. Kanute RE:: deposition scheduling.	350.00	0.20	70.0
	SJS	[REDACTED]	350.00	1.00	350.0
	SJS	Review Motion for Protective order on Order shortening time, signed and hearing date for service and filing.	350.00	0.40	140.0
	SJS	Exchange emails with G. West RE:: deposition scheduling.	350.00	0.20	70.0
	JAB	Exchange email communication with counsel (.2).	450.00	0.20	90.0
	JAB	Receive and review of plaintiff motion to counsel responses to interrogatories with requests for production of drafts (1.4).	450.00	1.40	630.0
09/12/2017	SJS	Draft stipulation RE:: hearing and deposition.	350.00	0.40	140.0
	SJS	Review motion to compel filed by Plaintiff.	350.00	0.80	280.0
	SJS	Review "opposition" filed by Plaintiff.	350.00	0.10	35.0
	SJS	Exchange emails with B. Phillips RE:: [REDACTED]	350.00	0.20	70.0
	SJS	Review and exchange emails with G. West RE:: stipulation.	350.00	0.40	140.0
	JAB	Exchange numerous email communication counsel (.3).	450.00	0.30	135.0
	JAB	Receive and review of plaintiff's opposition to motion for protective order (.2).	450.00	0.20	90.0
	JAB	Review of proposal stipulation to counsel (.2).	450.00	0.20	90.0
09/13/2017	SJS	Review documents for deposition preparation.	350.00	0.40	140.0
09/14/2017	SJS	Exchange email with G. West RE:: scheduling of motions.	350.00	0.20	70.0
	SJS	[REDACTED]	350.00	1.10	385.0
	SJS	[REDACTED]	350.00	0.60	210.0
	SJS	[REDACTED]	350.00	0.10	35.0
	SJS	Draft correspondence to chambers RE:: motion scheduling.	350.00	0.30	105.0
09/15/2017	SJS	[REDACTED]	350.00	0.30	105.0
	SJS	[REDACTED]	350.00	0.10	35.0
	SJS	[REDACTED]	350.00	0.80	280.0
	SJS	[REDACTED]	350.00	0.30	105.0
	JAB	[REDACTED] (.3).	450.00	0.30	135.0
09/17/2017	SJS	[REDACTED]	350.00	0.10	35.0
09/18/2017	SJS	[REDACTED]	350.00	0.10	35.0
	SJS	Exchange emails with G. West RE:: deposition confirmation.	350.00	0.40	140.0
	SJS	[REDACTED]	350.00	1.10	385.0
	SJS	[REDACTED]	350.00	1.40	490.0
	SJS	[REDACTED]	350.00	1.20	420.0
09/19/2017	SJS	Review scheduling order and dates for motions and litigation.	350.00	0.50	175.0
	SJS	Attend deposition of N. Grant.	350.00	1.30	455.0
	SJS	[REDACTED]	350.00	0.90	315.0

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			Rate	Hours	
	SJS	[REDACTED]			
	SJS	[REDACTED]	350.00	1.90	665.00
	SJS	[REDACTED]	350.00	0.70	245.00
09/20/2017	AD	[REDACTED] (.8).	350.00	0.80	280.00
	AD	[REDACTED] (1.9).	350.00	1.90	665.00
	SJS	[REDACTED]	350.00	0.80	280.00
	SJS	Attend deposition of T. Spruell.	350.00	2.20	770.00
	SJS	[REDACTED]			
	SJS	[REDACTED]	350.00	1.10	385.00
	SJS	Research [REDACTED]			
	SJS	[REDACTED]	350.00	1.40	490.00
	SJS	[REDACTED]	350.00	0.90	315.00
09/21/2017	AD	[REDACTED] (.6).	350.00	0.60	210.00
	AD	[REDACTED] (.6).	350.00	0.60	210.00
	AD	[REDACTED] (1.2).	350.00	1.20	420.00
	SJS	[REDACTED]	350.00	1.70	595.00
	SJS	[REDACTED]	350.00	1.10	385.00
	SJS	[REDACTED]	350.00	0.60	210.00
	JAB	Review of second amended responses to request for admissions (.6).	450.00	0.60	270.00
	SJS	[REDACTED]	350.00	1.60	560.00
	SJS	[REDACTED]	350.00	1.80	630.00
	SJS	Drafting of motion for summary judgment.	350.00	0.80	280.00
09/22/2017	AD	Review notes from review of expert materials and draft questions for expert testimony (1.7).	350.00	1.70	595.00
	SJS	Draft email to G. West RE: motion to compel.	350.00	0.10	35.00
	JAB	Review of summary email issue raised by George West (.3).	450.00	0.30	135.00
	JAB	Receive and review of notice of change of status on plaintiff's motion to complete and summary motion for protective order (.4).	450.00	0.40	180.00
	JAB	Discussion with George West (.3).	450.00	0.30	135.00
	JAB	Review of issues with exchange email communication with counsel (.4).	450.00	0.40	180.00
	SJS	Attend and take deposition of Plaintiff's expert R. Avellini.	350.00	6.10	2,135.00
	SJS	[REDACTED]	350.00	1.10	385.00
	SJS	Drafting for motion for summary judgment.	350.00	0.90	315.00
	SJS	Review notice and status filed by plaintiff's counsel.	350.00	0.20	70.00
	SJS	Exchange emails with G. West RE: motions to compel.	350.00	0.30	105.00
	SJS	Vacate motion for protective order.	350.00	0.20	70.00
	SJS	Continued preparation for deposition.	350.00	1.70	595.00

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			Rate	Hours	
09/24/2017	SJS	[REDACTED]	350.00	1.30	455.00
09/25/2017	SJS	Review eighth supplement from plaintiff naming new witnesses.	350.00	0.20	70.00
	SJS	Draft correspondence regarding impropriety of new witnesses.	350.00	0.60	210.00
	SJS	Draft opposition to motion to compel Request for Admissions.	350.00	2.10	735.00
	SJS	Supplemental review of responses to requests for admissions.	350.00	0.70	245.00
	SJS	Exchange emails with Court reporters RE:: transcripts.	350.00	0.40	140.00
	SJS	Continued drafting of motion for summary judgment.	350.00	1.70	595.00
	SJS	Supplemental drafting of arguments for motions for summary judgment.	350.00	1.60	560.00
	SJS	Drafting of additional arguments for motion for summary judgment.	350.00	1.30	455.00
	JAB	Review, edit and draft opposition to plaintiff's motion to compel additional responses (1.0).	450.00	1.00	450.00
	JAB	Review of draft settlement offer for George West (.3).	450.00	0.30	135.00
	JAB	Review of objection needed (.6)	450.00	0.60	270.00
	JAB	Receive and review of plaintiff's eight supplement disclosure of documents with witnesses (.8).	450.00	0.80	360.00
09/26/2017	SJS	Revise opposition to motion to compel Request for Admissions responses.	350.00	0.40	140.00
	SJS	[REDACTED]	350.00	1.40	490.00
	SJS	[REDACTED]	350.00	2.30	805.00
	SJS	Continued drafting of motion for summary judgment.	350.00	1.60	560.00
	SJS	Review scheduling order RE:: motions in limine and pretrial deadlines.	350.00	0.30	105.00
	SJS	Review 8th supplement from plaintiff.	350.00	0.30	105.00
	JAB	Review and edit of finalized opposition to motion compel (.8).	450.00	0.80	360.00
	JAB	[REDACTED] (.4).	450.00	0.40	180.00
	JAB	Review of outline of motion for summary judgement (1.5).	450.00	1.50	675.00
	JC	[REDACTED]	175.00	1.80	315.00
	JC	[REDACTED]	175.00	1.70	297.50
	JC	[REDACTED]	175.00	1.80	315.00
	SJS	[REDACTED]	350.00	1.60	560.00
	JAB	[REDACTED] (.8).	450.00	0.80	360.00
	JAB	[REDACTED] (1.4).	450.00	1.40	630.00
09/27/2017	SJS	[REDACTED]	350.00	1.10	385.00
	SJS	Review of expert deposition transcript for motion to strike.	350.00	1.70	595.00
	JAB	Discussion with George West (.4).	450.00	0.40	180.00
	JAB	Review of numerous issues raised by court (.4).	450.00	0.40	180.00
	JAB	Telephone call with law clerk Department 22 (.2).	450.00	0.20	90.00

Sahara Chrysler Jeep Dodge adv. Derrick Poole

		<u>Rate</u>	<u>Hours</u>	
JAB	Begin review of revisions to draft motion for summary judgment (1.4).	450.00	1.40	630.0
JC	Review of Draft Motion for Summary Judgment.	175.00	1.10	192.5
SJS	[REDACTED]			
	[REDACTED]	350.00	1.90	665.0
SJS	Commence research and review of sources and authority for motion to strike.	350.00	1.80	630.0
SJS	Review of documents and transcript for motion to strike.	350.00	1.90	665.0
JAB	Attend hearing in front of discovery commissioner (1.0).	450.00	1.00	450.0
JAB	Continue with reviews and analysis of needed motion in Limine and motion to strike (1.2).	450.00	1.20	540.0
			115.70	41,425.0

Expenses

09/12/2017	Clark County Clerk		
	1483272 Certificate of Service (mlf)		3.5
09/25/2017	Huebner Court Reporting, Inc.		
	Inv# 2259		796.0
09/25/2017	Huebner Court Reporting, Inc.		
	Inv# 2258		414.2
09/25/2017	Wreck Check Car Scan Centers		
	Inv# 3521 (mlf)		1,470.0
	Total Expenses		2,683.7
	Total amount of this bill		44,108.7
	Previous Balance		\$26,230.4
	Please Remit Balance Due		<u>\$70,339.1</u>



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Page:
November 09, 2017
Account No: 12386-005
Statement No: 18716

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			Rate	Hours	
09/28/2017	SJS	[REDACTED]	350.00	1.60	560.00
	SJS	Draft motion to continue trial.	350.00	1.60	560.00
	SJS	Draft motion in limine RE:: references to Consumer attorneys against auto fraud.	350.00	1.40	490.00
	SJS	Supplemental drafting on motion to strike expert.	350.00	1.80	630.00
	SJS	Additional citations and deposition transcript review and drafting.	350.00	1.90	665.00
	JC	[REDACTED]	175.00	1.80	315.00
	JC	[REDACTED]	175.00	1.90	332.50
	JC	[REDACTED]	175.00	1.60	280.00
	JC	Review of potential motions in limine.	175.00	1.10	192.50
	JAB	Continue with draft of motion for survey judgement (1.0).	450.00	1.00	450.00
	JAB	Exchanged communication with counsel (.3).	450.00	0.30	135.00
	JAB	Receive and review of drafts discovery order for George West (.3).	450.00	0.30	135.00
	JAB	Receive and review of exchanged of numerous email communications with George West (.4).	450.00	0.40	180.00
	JAB	Review of numerous actions needed with related matter (.8).	450.00	0.80	360.00
	JAB	Review and outline of numerous motion in Limine and to exclude certain testimony and evidence (1.5).	450.00	1.50	675.00
09/29/2017	SJS	[REDACTED]	350.00	1.60	560.00
	SJS	Review of motion to strike.	350.00	1.40	490.00
	SJS	Prepare exhibits and revise citations to motion to strike expert.	350.00	1.80	630.00
	JC	[REDACTED]	175.00	1.20	210.00
	JC	[REDACTED]	175.00	1.90	332.50
	JC	[REDACTED]	175.00	1.80	315.00
	JC	[REDACTED]	175.00	1.90	332.50
	JAB	Review, edit and revise of draft motion to exclude exhibit report with expert testimony (1.6).	450.00	1.60	720.00
	JAB	Review, edit with revise draft motion to continue trial order shortening time (.8).	450.00	0.80	360.00

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			Rate	Hours	
	JAB	[REDACTED] (.5).	450.00	0.50	225.0
	JAB	[REDACTED] (.3).	450.00	0.30	135.0
	JAB	Meet and conference with George West (.3).	450.00	0.30	135.0
	JAB	Attend meeting and conference with George West (.6).	450.00	0.60	270.0
	JAB	Continue with revision and finalize draft motion to exclude expert witnesses testimony and report (1.4).	450.00	1.40	630.0
	SJS	Supplemental edits and exhibits for motion for summary judgment.	350.00	1.30	455.0
	SJS	[REDACTED] .	350.00	1.80	630.0
	JAB	Review of draft Motion to Strike all Reference to Auto Fraud and George West's Law Firm (1.0).	450.00	1.00	450.0
10/01/2017	SJS	Draft stipulation regarding motions in limine.	350.00	0.60	210.0
	SJS	Draft motion in limine no. 1 to preclude previously undisclosed witnesses.	350.00	1.20	420.0
	SJS	Draft motion in limine RE:: preclude frame damage.	350.00	1.30	455.0
	SJS	Draft Motion in limine to preclude safety opinion.	350.00	1.30	455.0
10/02/2017	SJS	[REDACTED]	350.00	0.20	70.0
	SJS	Draft email to G. West RE:: stipulation and order.	350.00	0.20	70.0
	SJS	Edit motion in limine stipulation.	350.00	0.10	35.0
	SJS	Supplemental revisions to motion for summary judgment.	350.00	1.60	560.0
	SJS	Draft revisions to four motions in limine.	350.00	1.60	560.0
	SJS	Review exhibits to motions in limine and prepare for filing.	350.00	0.60	210.0
	SJS	Review and prepare exhibits to motion for summary judgment.	350.00	1.70	595.0
	SJS	Review and edit citations and facts references.	350.00	1.10	385.0
	SJS	Supplemental revision and review of motion for summary judgment exhibits and excerpts.	350.00	1.20	420.0
	SJS	Draft motion in limine to preclude general consumer perception.	350.00	0.80	280.0
	SJS	Review filing notice and hearing date for motion for summary judgment.	350.00	0.10	35.0
	JAB	Continue with revisions to draft motion for summary judgment (1.5).	450.00	1.50	675.0
	JAB	Exchange numerous email communication with counsel (.3).	450.00	0.30	135.0
	JAB	Telephone call with George West (.3).	450.00	0.30	135.0
	JAB	Exchange email communications with George West (.3).	450.00	0.30	135.0
	JAB	Receive and review of new offer for plaintiff on settlement (.3).	450.00	0.30	135.0
	JAB	Review, edit and draft proposal stipulation on trial exclusions (.6).	450.00	0.60	270.0
	JAB	Review, edit and finalize motion in Limine one on one striking late disclosed witness (1.0).	450.00	1.00	450.0
	JAB	Review, edit and finalize motion in Limine two relating to frame damage to vehicle (.7).	450.00	0.70	315.0
	JAB	Review, edit and finalize in Limine three, relating to testimony on vehicle (.8).	450.00	0.80	360.0
	JAB	Review, edit and finalize motion in Limine four relating to consumer expectation (.5).	450.00	0.50	225.0
	JAB	Review of issues relating to stipulation on hearing (.4).	450.00	0.40	180.0

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			Rate	Hours	
10/03/2017	SJS	Review filing confirmations and motion hearing dates.	350.00	0.40	140.0
	JAB	Exchange numerous email communications with counsel (.3).	450.00	0.30	135.0
	JAB	Review of proposed stipulation for George West (.3).	450.00	0.30	135.0
	JAB	Review of numerous issues with request made by George West (.4).	450.00	0.40	180.0
	SJS	Review email from chambers RE:: Order shortening time for hearing.	350.00	0.10	35.0
	SJS	Review email and proposed stipulation from G. West.	350.00	0.20	70.0
	SJS	Review email and invoice from G. West RE:: R. Avellini.	350.00	0.20	70.0
	SJS	Revise responses to first Request for Admissions to Plaintiff.	350.00	0.80	280.0
	SJS	Review updated CV for expert R. Avellini.	350.00	0.20	70.0
	SJS	Review of all deadlines for pretrial and potential deadlines for motions and scheduling.	350.00	1.40	490.0
10/04/2017	JAB	Receive and review of proposal stipulation for George West (.3).	450.00	0.30	135.0
	JAB	Review of trial subpoena for counsel (.4).	450.00	0.40	180.0
	JAB	[REDACTED] (.8).	450.00	0.80	360.0
	JAB	[REDACTED] (.8).	450.00	0.80	360.0
	SJS	Review signed Order shortening time and service of motion to continue trial.	350.00	0.20	70.0
	SJS	Review G. West changes and email for stipulation on motions in limine.	350.00	0.60	210.0
	SJS	Finalize responses to requests for admissions, email G. West.	350.00	0.20	70.0
	SJS	Review Discovery Commissioner's Report and Recommendations and execute copy.	350.00	0.30	105.0
	SJS	Review of trial subpoenas issued by G. West.	350.00	0.60	210.0
	SJS	Review email from C. Friedberg RE:: stipulation and attachment.	350.00	0.40	140.0
	SJS	Review service of subpoena duces tecum and documents.	350.00	0.30	105.0
	JAB	Receive and review of proposed changes to agreed upon stipulation to exclude certain evidence and testimony (.8).	450.00	0.80	360.0
10/05/2017	JAB	Exchange numerous email communication with George West (.3)	450.00	0.30	135.0
	JAB	[REDACTED] (.8).	450.00	0.80	360.0
	JAB	Review and analyze issues raised by George West (.5).	450.00	0.50	225.0
	JAB	Receive and review of subpoena Duces Team for trial (.4).	450.00	0.40	180.0
	SJS	Exchange emails with G. West RE:: Discovery Commissioner's Report and Recommendations signature.	350.00	0.20	70.0
	SJS	Review email exchange regarding stipulation to continue hearing.	350.00	0.20	70.0
	SJS	Review email exchange RE:: [REDACTED]	350.00	0.20	70.0
	SJS	[REDACTED]	350.00	0.30	105.0
	SJS	Revise proposed order.	350.00	0.20	70.0
	SJS	Check minutes and court docket to determine if minutes posted.	350.00	0.10	35.0
	SJS	Review pre-trial requirements and initial preparation for 2.67.	350.00	1.70	595.0

Sahara Chrysler Jeep Dodge adv. Derrick Poole

			Rate	Hours	
10/06/2017	JAB	Exchange numerous email communication with George West (.4)	450.00	0.40	180.00
	SJS	[REDACTED]	350.00	0.20	70.00
	SJS	[REDACTED]	350.00	0.70	245.00
	SJS	Draft email to G. West RE:: invoice and payment to expert.	350.00	0.30	105.00
	SJS	Review exchange of emails RE:: Poole and invoices.	350.00	0.40	140.00
	SJS	Exchange of emails with C. Friedberg.	350.00	0.20	70.00
10/09/2017	SJS	Review emails from G. West RE: trial subpoenas and information.	350.00	0.40	140.00
	SJS	Review letter RE:: confirmation to expert to G. West.	350.00	0.20	70.00
	SJS	Review filing RE:: service only of application to continue hearings on Defendant's motions.	350.00	0.20	70.00
	SJS	Review evidentiary stipulations.	350.00	0.40	140.00
	SJS	Review ex parte application to move defendant's motions.	350.00	0.70	245.00
	JAB	Receive and review of numerous emails for George West (.4).	450.00	0.40	180.00
	JAB	Review of all trial subpoenas for counsel of related proposal stipulation (.8).	450.00	0.80	360.00
	JAB	Receive and review of expert application to continue hearing in district court filed by plaintiff (.5).	450.00	0.50	225.00
	JAB	Review of actions needed in opposition and reply briefs (.8).	450.00	0.80	360.00
10/10/2017	SJS	[REDACTED]	350.00	0.20	70.00
	SJS	Review pretrial notice served by plaintiff's counsel.	350.00	0.20	70.00
	SJS	Review trial subpoenas.	350.00	0.40	140.00
	SJS	Draft email to G. West RE:: trial subpoenas and other issues.	350.00	0.20	70.00
	JAB	Receive and review of notice of 2.62 pretrial conference (.5).	450.00	0.50	225.00
	JAB	Receive and review of revised trial subpoenas (.6).	450.00	0.60	270.00
	JAB	Receive and review of revised subpoenas (.6).	450.00	0.60	270.00
	JAB	Review of email exchange between the parties (.3).	450.00	0.30	135.00
10/11/2017	SJS	Review emails with trial subpoenas to / from G. West.	350.00	0.20	70.00
	SJS	Review revised trial subpoenas.	350.00	0.30	105.00
	SJS	Review file RE:: other trial subpoenas and potential witnesses.	350.00	0.60	210.00
	SJS	Review email exchange RE:: revised trial subpoenas.	350.00	0.20	70.00
	SJS	Draft limited opposition to plaintiff's motion to continue hearings.	350.00	1.10	385.00
	SJS	Exchange emails with G. West RE:: 2.67.	350.00	0.30	105.00
	SJS	Review protocol and rules for 2.67.	350.00	0.30	105.00
	JAB	Review of email communication and revised trial subpoenas (.4).	450.00	0.40	180.00
	JAB	Review of numerous email communication between the parties relating to 2.67 conference (.2).	450.00	0.20	90.00
	JAB	Exchange additional email communication with counsel (.3).	450.00	0.30	135.00
10/12/2017	SJS	Review emails from G. West and J. Bendavid RE:: rescheduling and previous agreements.	350.00	0.50	175.00
	SJS	[REDACTED]	350.00	0.30	105.00

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK POOLE,

Appellant,

Supreme Court Case No: 74808

v

District Court Case No.:
A-16-737120-C

NEVADA AUTO DEALERSHIP
INVESTMENTS LLC a Nevada
Limited Liability Company d/b/a
SAHARA CHRYSLER, JEEP,
DODGE, and COREPOINTE
INSURANCE COMPANY,

Respondents,

Appeal from the Eighth Judicial District Court, Clark County.
The Honorable Nancy Alff, District Court Judge

APPELLANT'S APPENDIX VOLUME 5

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Attorneys for Appellant Derrick Poole

Appendix Alphabetical Index

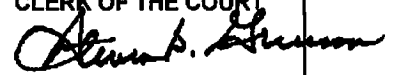
Vol.	Date	Description	Page Numbers
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Attorney for Plaintiffs
DERRICK POOLE

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,

Plaintiff,

v

NEVADA AUTO DEALERSHIP INVEST-
MENTS LLC a Nevada Limited Liability
Company d/b/a SAHARA CHRYSLER,
JEEP, DODGE, WELLS FARGO DEALER
SERVICES INC., COREPOINTE INSUR-
ANCE COMPANY, and DOES 1 through 100,
Inclusive,

Defendants,

CASE NO : A-16-737120-C
DEPT : XXVII

**FIRST AMENDED
COMPLAINT FOR DAMAGES
AND EQUITABLE AND DECLARA-
TORY RELIEF AND DEMAND FOR
JURY TRIAL**

1. Consumer Fraud/Deceptive Trade Practices
2. Rescission
3. Equitable Estoppel
4. Restitution/Unjust Enrichment
5. Declaratory Relief
6. Recovery under Auto Dealership Bond

[Lodged Concurrently with Motion for
Leave to File First Amended Complaint]

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1 4. At all relevant times herein mentioned, Defendant WELLS FARGO
2 DEALER SERVICES INC ("WFB") is believed to be a corporation organized and existing
3 under the laws of California, and is authorized to do business in the State of Nevada,
4 County of Clark, City of Las Vegas. Said Defendant was a previous "holder" and/or
5 assignee of the Plaintiffs' Retail Installment Sale Contract ("RISC") a/k/a a "consumer
6 credit contract," as hereinafter described, of which Plaintiff made payments to WFB
7 based on the assignment of the RISC to WFB and it was WFB's capacity as a "holder" of
8 the RISC in which those monthly payments were made, as hereinafter alleged.

10 5. At all relevant times herein mentioned, Defendant COREPOINTE
11 INSURANCE COMPANY ("COREPOINTE") is a corporation organized and existing
12 under the laws of the State of Michigan, and is authorized to do business in the State of
13 Nevada, and was the bond company that issued and underwrote the licensing bond to
14 Defendant SAHARA pursuant to the provisions of NRS 482.345.

16 6. At all relevant times herein mentioned, Defendant SAHARA was "dealer"
17 and/or "new vehicle dealer" within the definition of NRS 482.020. Furthermore, at all
18 relevant times, Plaintiff was a "consumer" as defined by 16 C.F.R. 433.1(b), and the
19 RISC entered into between Plaintiff and SAHARA was a "purchase money loan" and
20 "consumer credit contract" as defined by 16 C.F.R. 433.1(d) and (i).

21 7. On May 26, 2014, Plaintiff took delivery of and entered into a RISC a/k/a
22 "consumer credit contract," with Defendant SAHARA for the financed purchase of a
23 used 2013 *certified pre-owned* ("CPO") Ram 1500 Truck with 6,716 miles on it at time of
24 sale ("vehicle"). The RISC called for Plaintiff to make 72 monthly payments in the
25 amount of \$ 654.53. To date as of the filing of this Complaint, Plaintiff made all of his
26 monthly payments to WFB, including payments under the initial RISC when the RISC
27 was assigned to WFB from SAHARA shortly after Plaintiff purchased the vehicle from
28

1 SAHARA. Plaintiff put down \$ 4,000.00 in trade for the vehicle, which was the agreed
2 upon price of his trade in. After adding all other ancillary charges, including doc fees,
3 gap insurance, tax, title, emissions and finance charges, and deducting the amount of
4 the Plaintiff's trade in, the total aggregate amount of payments under the RISC was \$
5 47,126.16. It is this amount Plaintiff was initially obligated to pay to Defendant WFB
6 over the loan term under the RISC, per the hereinafter referenced assignment of the
7 Plaintiffs' RISC from SAHARA to WFB.
8

9 8. Shortly after the RISC was entered into with the Plaintiff, Defendant
10 SAHARA assigned Plaintiffs' RISC to Defendant WFB, wherein WFB then became the
11 assignee and "holder" of said RISC (a/k/a consumer credit contract), as well as the
12 secured party under Article 9 of the UCC, to whom Plaintiff are is under an obligation to
13 pay the balance on the contract. Said RISC had the following express contractual term
14 as part of said RISC's terms and conditions :
15

16 NOTICE : ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS
17 ***SUBJECT TO ALL CLAIMS AND DEFENSES*** WHICH THE DEBTOR
18 COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES
OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF.
RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED
AMOUNTS PAID BY THE DEBTOR HEREUNDER.¹

19 ¹ It is noteworthy to point out that this language is mandated by 16 C.F.R. §§ 433.1 and 433.2,
20 (commonly known as the FTC Holder Rule), to be in all consumer credit contracts' and therefore makes
21 such terms and conditions a matter of state contract law. However it should be noted that Plaintiff has
22 not plead a claim for relief based on the provisions of what is commonly known as the "FTC Holder Rule."
23 These C.F.R. sections do not establish or confer a federal private claim for relief under their provisions.
24 *See infra. It has been widely held that the mere mention, reference or even reliance on the*
25 *provisions of the "FTC Holder Rule" in a Complaint does not confer federal question*
26 *jurisdiction.* This is not only because such provisions do not create any type of private federal right of
27 action, but the Plaintiff's underlying claims ***are solely based on state law.*** Plaintiff is merely using
28 the FTC Holder Rule provisions solely for purposes of preserving and asserting *state law claims and*
remedies against the subsequent assignee and/or "holder" of the RISC a/k/a a "consumer credit contract."
See *Walker Motors Sales, Inc.* 162 F. Supp. 2d 786 (S.D. Ohio, 2000) [holding there is no private right
of action under the "FTC Holder Rule" in an of itself without a state law derivative claim]; *Glovier v.*
Barton Homes, LLC, 452 F. Supp. 2d 657, (W.D. La., 2006) [holding purchasers' action against holder
did not arise under federal law for the Court to be able to be vested with federal-question jurisdiction,
notwithstanding purchasers' reliance and mentioning of the FTC holder rule to bring in the
assignee/holder]; *Mathis vs Gibson* 2008 WL 2330537 (D.S.C. 2008) [holding Federal District Court
did not have federal question jurisdiction based on the assertion of state law claims, as permitted and
preserved by the FTC Holder Rule, against a subsequent holder]; *Frichhorn vs Lake County Chrysler*
2006 WL 2970236 (N.D. Ohio, 2006) [holding a complaint's reference to the FTC Holder Rule either to

9. By virtue of said expressly agreed to contractual term, as integrated into the terms and conditions of the RISC, WFB, (the holder of the RISC), has contractually agreed to be subject to any and all defenses **and** claims that Plaintiff could assert against Defendant SAHARA (the seller) with respect to the vehicle while it was the holder of the original RISC between Plaintiff and SAHARA.

10. At all relevant times Defendants were the partners, joint ventures, agents, employees, managers, supervisors, related companies, and servants, of each and every other Defendant herein, and were acting at all times within the scope, purpose and authority of said partnership, joint venture, agency, employment, and with the knowledge, consent, permission, acquiescence and ratification of their co-Defendants.

11. At all relevant times Plaintiff has complied with all of the terms and conditions under her RISC, except those which have been excused based on the deceptive trade practices of Defendant SAHARA, as hereinafter alleged.

II

FIRST CLAIM FOR RELIEF FOR DECEPTIVE TRADE PRACTICES

AS AGAINST DEFENDANTS SAHARA AND WFB ONLY

[NRS 41.600(e); Statutory Consumer Fraud]

12. Plaintiff herein incorporates by reference and herein realleges paragraphs 1 through 10.

provide the applicable standard of care or additional evidence of a state-law violation—does not create a federal question jurisdiction]; *Morales v. Medina v. Performance Auto. Grp., Inc.*, 841 F. Supp. 2d 1121 (E.D. Cal. 2012) [holding Federal removal jurisdiction could not be premised upon the Federal Trade Commission's (FTC) "Holder Rule with respect to Plaintiff pursuing claims against the assignee which were based upon state law].

It should also be expressly noted that Plaintiff is not making any affirmative claim for relief or seeking any remedies, relief or damages under any federal statute or regulation, but rather is only mentioning any federal statutes and/or regulations as further evidence that ***Defendant committed a deceptive trade practice under state law***, because a violation of a federal regulations or statute "relating to the sale of goods is" an independent and actionable deceptive trade practice under Nevada state law pursuant to the NDTA and does not turn or seek to invoke any claim, remedies or actions based on the federal statute or regulation mentioned. See NRS 598.0923(3).

1 13. At all relevant times, Defendant SAHARA represented to the Plaintiff, both
2 orally and in writing, and held out, and displayed for sale and represented that the
3 vehicle to the Plaintiff as a CPO Dodge Ram 1500. Pursuant to the Chrysler Dodge CPO
4 Inspection Standards between the manufacturer and a franchised dealership who
5 participates in the Chrysler/Dodge CPO program, for a vehicle to qualify for the CPO
6 program, the franchised dealer (SAHARA), must undertake and successfully complete a
7 rigorous and comprehensive multistep certification process before it can advertise,
8 represent, display or sell a vehicle to the community as a Chrysler/Dodge CPO vehicle.
9

10 14. One of these important steps, prior to advertising, displaying or selling a
11 Chrysler/Dodge CPO vehicle to the community is the strictly mandated requirement to
12 have a Chrysler/Dodge certified technician conduct a comprehensive 125 point
13 inspection on the vehicle, which also specifically includes and encompasses an inspection
14 of the vehicle for any frame/unibody damage or other indicia or indications of a vehicle
15 having been involved in significant prior collisions. Dealers are also required to run a
16 Carfax on the vehicle. If these two critical steps are not undertaken by the dealership, a
17 vehicle, including the Plaintiff's vehicle, cannot be advertised, displayed or listed for sale
18 or actually sold as a Chrysler/Dodge "CPO" vehicle. Notwithstanding the content of any
19 CarFax report, including the lack of any indication or an actual indication of a previous
20 collision or accident to the vehicle on the Carfax report, SAHARA, at all times had an
21 separate and independent duty to thoroughly inspect the vehicle to ensure it did not have
22 any frame damage or other indicia that the vehicle had been in a significant collision or
23 collisions, and to make full disclosure to any potential buyer regarding the findings on
24 their inspection.
25
26
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1 15. Furthermore, under Chrysler/Dodge's own standards involving CPO
2 vehicles, any vehicle that has sustained any frame damage are automatically ineligible to
3 be sold as a Chrysler/Dodge CPO vehicle. Furthermore, when a vehicle that is going to
4 be sold as a CPO vehicle has sustained a significant previous collision damage, the nature
5 and extent of that previous collision and the damage and repairs related to that collision
6 would be abundantly clear to the dealer given the dealer's obligations to have all CPO
7 vehicles go through Chrysler/Jeep's comprehensive inspection process with a Chrysler
8 certified technician.
9

10 16. Given the extent the of damage caused by the previous collision/accident to
11 the vehicle, the nature and extent of that previous collision damage and the extent of the
12 repairs to the vehicle would been abundantly evident and discovered at time of
13 SAHARA's comprehensive CPO inspection process. As a CPO vehicle, such marketing
14 and selling of a CPO is to give the consumer the piece of mind that the vehicle does not
15 have any previous significant collision and/or frame damage, and to further induce
16 consumers within the community to purchase a CPO vehicle at a higher price as
17 compared to a comparable non CPO vehicle.
18

19 17. Nevertheless, given the extremely negative stigma consumers attach to
20 vehicles that have been in significant previous collisions, this important fact, which was
21 known to SAHARA, prior to the vehicle's sale to the Plaintiff, (as hereinafter alleged),
22 was statutorily required to still be clearly disclosed to any consumer at time of sale,
23 including the nature and extent of the previous collision if it was known or should have
24 been known by SAHARA, prior to the sale of the vehicle to the Plaintiff.
25

26 18. Indeed, one of the primary reasons for selling a Chrysler Dodge CPO
27 vehicle is to reduce the consumer's perception of the risk involved with purchasing a
28 used with respect to the vehicle having and/or suffering significant previous collisions

1 and/or previous accidents, and the perceived safety issues and diminished value to the
2 vehicle that previous collisions can cause to a vehicle in the mind of the consumer,
3 including the Plaintiff. The consumer's reasonable expectation when purchasing a
4 certified pre owned vehicle is that it does not have any significant previous collisions or
5 accidents or frame damage or other conditions that will diminish its safety or value,
6 which would be material and important to any reasonable consumer purchasing a CPO
7 used vehicle. This expectation on the part of the consumer is specifically created in the
8 advertising materials, brochures and other information that is disseminated to the
9 community with respect to buying piece of mind when purchasing a Chrysler/Dodge CPO
10 vehicle, which includes Chrysler/Dodge CPO vehicles.
11

12 19. More specifically, it is advertised with respect Chrysler/Dodge CPO vehicles
13 that :

- 14 A. When you have a Chrysler Group Certified Pre-Owned vehicle
15 ("CPOV") you have far more then just a "used" vehicle. You have
16 confidence. You have pride. You have a great vehicle that you can
17 trust. You're certified.
- 18 B. Every Chrysler, Jeep, Dodge and Ram CPOV can be counted on to
19 go the distance. Our CPO vehicles must pass a strident
20 certification process ***that guarantees only the finest late
model vehicles get certified.*** Every vehicle that passes is then
21 subjected to a comprehensive 125 point inspection and a through
22 reconditioning process using Authentic Mopar Parts.
- 23 C. What would you expect to pay to have a qualified technician give
24 this vehicle such a thorough inspection ?
- 25 D. ***Only the finest late model vehicles we have are going to
be certified to begin with, so the [CPO] vehicles you are
checking out on the lot are the best.***

26 20. Moreover, a CPO vehicle, as compared to a comparable non CPO vehicle,
27 will usually command and justify an increased selling price at least several hundreds of
28 dollars higher then a comparable non CPO vehicle, sometimes more then \$ 1,500.00,

1 and consumer's are willing to pay that increased price for the piece of mind that is
2 advertised to them about purchasing a Chrysler/Dodge CPO vehicle. Indeed, the
3 aforementioned written and/or on line materials and advertisements which are
4 disseminated to the community are there to provide a further inducement and incentive
5 to the consumer to spend the extra money to purchase "piece of mind" and confidence
6 with respect to a Chrysler/Dodge CPO certified vehicle.
7

8 21. On or about May 6, 2014, SAHARA acquired the vehicle from a private
9 party. That private party informed and specifically told SAHARA's used car manager,
10 Joshua Grant, that the vehicle had been in a previous collision in March of 2014, and also
11 gave Mr. Grant a copy of the body shop repair order relating to the repairs that were
12 undertaken on the vehicle as a result of the previous collision. The body shop estimate,
13 which was in Mr. Grant's possession, indicated the vehicle had \$ 4,088.00 in previous
14 collision damage, and also disclosed the nature and extent of the previous damage
15 caused by the accident, based upon the parts and components that were identified on the
16 repair order and replaced or repaired on the vehicle as a result of the previous collision.
17

18 22. That body shop estimate disclosed the following repairs to the vehicle,
19 which included, but were not limited to : a replaced front front frame end bracket, a
20 replaced radiator support, front bumper repaired, right inner and outer tie rods replaced,
21 and the stabilizer link replaced, left front wheel repaired and left front quarter panel
22 repainted.
23

24 23. After briefly doing an initial visual assessment and inspection on the
25 vehicle on May 6, 2014, Mr. Grant, at that point, made the initial decision and undertook
26 the initial steps to resell the vehicle as a CPO certified vehicle. On or about May 8, 2017,
27 (three days after the car logged into SAHARA's inventory and given a stock number), the
28 vehicle was brought into SAHARA's service department by Mr. Grant to undergo the

1 comprehensive CPO inspection process with one of their Chrysler certified technicians.
2 Mr. Grant did not inform anyone in the service department of the previous collision the
3 vehicle was in or given the body shop estimate regarding the vehicle to anyone in the
4 service department.

5 24. At the time of the technician's inspection, all of the aforementioned repairs
6 and replaced parts and components to the vehicle that were present due to the previous
7 collision the vehicle was involved in, and were all present and abundantly obvious to the
8 trained eye, including SAHARA's certified technician. As part Chrysler/Dodge's
9 comprehensive CPO inspection process, the technician is required to prepare and sign off
10 on the comprehensive check list, which the technician did.

12 25. Notwithstanding, and knowing of and/or having should have known of all
13 the aforementioned items being repaired or replaced on the vehicle, and also having a
14 good idea of the nature and extent of the previous damage and collision to the vehicle,
15 SAHARA's technician did not note any of these items were repaired or replaced, either in
16 the specific enumerated items set forth on the report, or in the area where "additional
17 information" could have been noted on the report. This, notwithstanding that
18 SAHARA's mechanic and SAHARA's used car manager actually knew of the nature and
19 extent of the previous collision, and also knew the car was going to be resold to the
20 community as a CPO vehicle.

22 26. During the sales process, the SAHARA's salesperson was explaining the
23 many advantages of buying a CPO vehicle, one of which was the comprehensive safety
24 inspection the vehicle undergoes. After the deal was negotiated in the sale's department,
25 Plaintiff was then brought into the F & I department to sign all the closing documents.
26 One of the documents Plaintiff was presented with was a Carfax that indicated the
27 vehicle had been in a previous accident. Plaintiff inquired about the accident and was
28

1 concerned about the previous accident the vehicle had been involved in, which was not
2 previously disclosed to him.

3 27. Plaintiff was then told that the vehicle had been through a comprehensive
4 safety inspection and if the previous accident was serious or significant, it would not have
5 been certified a CPO. Plaintiff was then presented and reviewed the CPO inspection
6 report as well that was prepared by SAHARA's technician. Having been told the car had
7 gone through a comprehensive inspection, having been assured that the accident was not
8 significant, and not seeing any indication on the CPO inspection report of anything being
9 replaced or repaired or damaged, Plaintiff's concerns regarding the accident were
10 resolved and he went forward with the sale.

12 28. Plaintiff not being made aware of nature and extent of the previous
13 collision and repairs to the vehicle, it was in approximately mid May of 2015, Plaintiff
14 first became aware of the nature and extent of the undisclosed damage to the vehicle, of
15 which SAHARA had actual knowledge of prior to the time of sale, and did not disclose to
16 him.

18 29. This information would have been a material (important) fact any
19 reasonable consumer, including the Plaintiff, would want to know about and would also
20 deem important in making a decision to purchase a used vehicle, especially with respect
21 to a CPO vehicle, given the purchase of a CPO vehicle is to take much of the risk out of
22 purchasing a used vehicle vis-à-vis the vehicle being in a previous significant collision
23 and/or having frame and/or unibody damage and excessive body damage. Had Plaintiff
24 been informed of the nature and extent of the damage to the vehicle which was in the
25 actual knowledge of SAHARA, he would not have purchased the vehicle and would not
26 have entered into the RISC for the vehicle.
27

1 30. At all relevant times, SAHARA, as a vehicle dealer within this community,
2 would know that any reasonable consumer, including the Plaintiff, associates a very
3 negative stigma to vehicles which have been in a previous collision or collisions, both as
4 to its safety and as to its value. Such a negative stigma is further heightened with respect
5 to a CPO vehicle given it is the consumer's expectation when purchasing a
6 Chrysler/Dodge certified vehicle that they are avoiding purchasing a vehicle that has any
7 such damage. Furthermore, Defendant SAHARA, as a vehicle dealership who sells
8 hundreds of CPO vehicles to the community, is fully aware of this expectation on the part
9 of the consumer when they choose to decide to purchase a Chrysler/Dodge CPO vehicle.
10 The information known to SAHARA relating to the nature and extent of the previous
11 damage to the vehicle, in the mind of a reasonable consumer, would relate to the
12 vehicle's safety and/or dramatically diminished its value, and would be important in
13 making a determination in whether to purchase the vehicle. Consumers do not seek to
14 purchase vehicles, especially CPO vehicles, with an accident history, and if an accident is
15 disclosed to them and the dealer has actual knowledge of the nature and extent of that
16 previous collision, SAHARA had the obligation to make full and complete disclosure to
17 the Plaintiff relating to all information it had within its possession regarding the previous
18 collision and the nature and extend of that accident, as it would have been material to
19 Plaintiff's decision to purchase the vehicle.
20
21

22 31. Pursuant to NRS §§ 41.600(e), 598.0915, and 598.0923 Defendant
23 SAHARA engaged in statutory consumer fraud/deceptive trade practices by knowingly
24 engaging in certain prohibited conduct and/or omissions including but not limited to :
25

- 26 A. Making a false representation as to the source, sponsorship,
27 approval **or certification** of goods for sale. [NRS 598.0915(2) and
28 NRS 41.600(e)]

- 1 B. Representing that goods for sale are of a particular standard, quality
2 or grade ***if he knows or should know*** that they are of another
3 standard, quality, grade, style or model. [NRS 598.0915(7) and NRS
4 41.600(2)(e)]
5 C. Failing to disclose a material fact in connection with the sale of
6 goods. [NRS 598.0923(2) and NRS 41.600(2)(e)]
7 D. Violating a federal or state statute or regulation relating to the sale of
8 goods. [NRS 598.0923(3) and NRS 41.600(2)(e)]²
9 E. Making any other false representation in a transaction. [NRS
10 598.0915(15) and NRS 41.600(2)(e)]

11 32. As a direct and proximate cause the deceptive conduct and/or omissions,
12 as herein alleged, Plaintiff has been damaged.

13 33. Furthermore, Defendant SAHARA in engaging in the aforementioned
14 deceptive trade practices, has acted willfully, intentionally, maliciously and fraudulently,
15 with intent to deceive and defraud the Plaintiff, with great recklessness and carelessness
16 in total disregard of the consequences of their intentional actions upon Plaintiff, thereby
17 entitling the Plaintiff to an additional award of damages in the nature of punitive and/or
18 exemplary damages in a sum subject to proof at time of trial.

19 II

20 **SECOND CLAIM FOR RELIEF FOR RESCISSION OF CONTRACT** 21 **AS AGAINST DEFENDANTS SAHARA AND WFB ONLY** 22 **[NRS 41.600(3)(b) and Common Law]**

23 34. Plaintiffs herein incorporate by reference and hereby reallege paragraphs 1
24 through 32

25 35. Based on the aforementioned deceptive trade practices, as herein alleged,
26 Plaintiff is entitled to rescission and/or cancellation of their RISC, (including WFB as

27 ² See 16 C.F.R. § 455.1(a)(1), a federal regulation relating to the sale of goods which states : "It is a
28 deceptive act or practice for any used vehicle dealer when that dealer sells or offers for sale a used vehicle
... to misrepresent the mechanical condition of a used vehicle."

1 the assignee/holder of the RISC).

2 **III**

3 **THIRD CLAIM FOR RELIEF FOR EQUITABLE ESTOPPEL**

4 **AS AGAINST DEFENDANTS SAHARA AND WFB ONLY**

5 **[NRS 41.600(3)(b) and Common Law]**

6 36. Plaintiff hereby incorporates by reference and herein realleges paragraphs
7 1 through 35

8 37. At all relevant times herein mentioned, Defendant SAHARA was a
9 franchised Chrysler/Dodge dealership and participant in the Chrysler/Dodge CPO
10 program. By virtue of its status as a franchised Chrysler/Dodge dealer who was a
11 participant in the Chrysler/Dodge CPO program, and given the rigorous undertakings
12 and requirements the dealer has to go through to properly certify a Dodge as a CPO
13 under the CPO program, SAHARA had vastly superior knowledge about the condition of
14 the vehicle, as herein alleged. This was based on the purported mandatory CPO
15 inspection undertaken on the vehicle, and as such had a duty to disclose the true and
16 accurate condition of the vehicle to the Plaintiff, which SAHARA knew, or should have
17 known about.

18
19 38. At all relevant times herein mentioned, Defendant SAHARA intended for
20 the Plaintiff to act upon the Defendant's omissions/misrepresentations, (as herein
21 alleged), in conducting the sale, delivery and inspection of the vehicle as a CPO vehicle,
22 and Defendant SAHARA had a duty to speak given the dealer had superior knowledge
23 with respect to the vehicle's condition based upon it's purported CPO inspection, which
24 would have also had to have been conducted in accordance with Chrysler/Dodge's CPO
25 standards involving CPO inspections.

26
27 39. At all relevant times herein mentioned, the Plaintiff was unaware of the
28 vehicle's deficiencies as herein described. ¹⁴ Furthermore, Plaintiff detrimentally relied

and/or acted upon on Defendant's omissions with respect to the vehicle being a CPO vehicle.

40. Based on the aforementioned deceptive conduct and affirmative engagement in deceptive trade practices and/or consumer fraud, Defendant SAHARA has acted unconscionably and has unclean hands, and by virtue of said conduct, Defendants SAHARA and WFB, (as the initial assignee and previous “holder” of the RISC), are estopped from claiming the RISC is valid and/or otherwise enforceable, or any other subsequent contract with WFB involving the vehicle.

IV

FORTH CLAIM FOR RELIEF FOR RESTITUTION/UNJUST ENRICHMENT AGAINST DEFENDANT SAHARA WFB ONLY

[NRS 41.600(3)(b) and Common Law]

41. Plaintiff hereby incorporates by reference and herein realleges paragraphs 1 through 40.

42. Based on the aforementioned deceptive trade practices, as herein alleged, Defendant SAHARA and WFB has been unjustly enriched to the detriment to the Plaintiff, and Plaintiffs are entitled to the return of his down (the agreed amount of his trade in), and monthly payments under the RISC, and said Defendants hold said funds as constructive trustee for the benefit of the Plaintiff.

V

FIFTH CLAIM FOR RELIEF FOR DECLARATORY
RELIEF AS AGAINST DEFENDANT SAHARA AND WFB ONLY

43. Plaintiff hereby incorporates by reference and herein realleges paragraphs 1 through 42

44. An actual controversy has arisen and now exists between Plaintiff and the Defendants with regard to the validity, enforceability and/or violability of the

aforementioned RISC entered into with SAHARA and then assigned to WFB, and Plaintiffs' right to Rescission and/or Restitution. Plaintiff contends the RISC is void ab initio and/or voidable and that they are entitled to rescission and restitution. Defendants contend the RISC is valid and enforceable and that Plaintiff is not entitled to Rescission and/or Restitution under the RISC, and that Plaintiff are still obligated to pay the remaining balance in the agreed upon monthly payments to WFB, under the initial RISC assigned to WFB and under any other subsequent contract entered into with WFB relating to the financing of the vehicle.

45. Plaintiff desires and seeks a judicial determination as to voidability and/or enforceability of the aforementioned RISC relating to the vehicle.

46. A judicial declaration is necessary and appropriate at this time under the circumstances in order for the parties to be able to ascertain their rights, obligations and remedies under the aforementioned RISC.

VI

SIXTH CLAIM FOR RELIEF FOR RECOVERY UNDER AUTO DEALERSHIP

SURETY BOND AS AGAINST DEFENDANT COREPOINTE ONLY

[NRS 482.345(7)]

47. Plaintiff hereby incorporates by reference and herein realleges paragraphs 1 through 46

48. At all relevant times herein mentioned, Defendant COREPOINTE is the issuer of a dealership licensing surety bond issued to Defendant SAHARA pursuant to the licensing provisions of NRS 482.345, of which said bond was in effect at the time of the sale of the vehicle to the Plaintiff, as well as at the time this Complaint was filed.

49. Plaintiff, as alleged herein, has been damaged by the deceptive trade practices of Defendant SAHARA as set forth herein, who is a “dealer” as referenced and

1 defined by NRS 482.345, of which said damages or losses and equitable relief, as alleged
2 herein, were all caused and/or necessitated by SAHARA's owners, principals, employees
3 and/or managers who were all working within the scope of their employment.

4 **WHEREFORE**, Plaintiff, prays for judgment against Defendants, as follows:

5 **On First Claim for Relief:**

- 6
7 1. For actual damages,
8 2. For exemplary damages as against SAHARA only, according to proof, and
9 3. For prejudgment interest, and
10 4. For all incidental/consequential losses and/or damages, and
11 5. For reasonable attorneys fees, and
12 6. For costs of suit incurred herein, and
13 7. For such other and further relief as the Court deems just and proper.

14 **On Second Claim for Relief:**

- 15 1. For a judicial declaration estopping Defendant from enforcing the
16 contract, and
17 2. For reasonable attorneys fees, and
18 3. For costs of suit incurred herein, and
19 4. For such other and further relief as the Court deems just and proper.

20 **On Third Claim for Relief:**

- 21 1. For a judicial declaration voiding/rescinding the RISC and for restitution
22 of all amounts tendered to Defendants, and;
23 2. For all incidental/consequential losses and/or damages, and
24 3. For reasonable attorneys fees, and
25 4. For costs of suit incurred herein, and
26 5. For such other and further relief as the Court deems just and proper.

27 **On Forth Claim for Relief :**

- 28 1. For restitution of all amounts paid to Defendants by Plaintiff, and
2. For reasonable attorneys fees, and
3. For costs of suit incurred herein, and
4. For such other and further relief as the Court deems just and proper.

On Fifth Claim for Relief :

1. For a judicial declaration estopping Defendants from asserting the RISC or any other financing contract is valid or otherwise enforceable, and,
3. For a judicial declaration rescinding the RISC, and,
4. For a judicial declaration entitling Plaintiff to restitution, and
5. For all incidental losses and/or damages, and
6. For reasonable attorneys fees, and
7. For costs of suit incurred herein, and
8. For such other and further relief as the Court deems just and proper.

On Sixth Claim For Relief

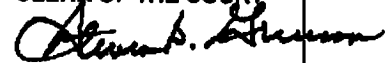
1. For actual damages, and
2. For prejudgment interest, and
3. For all incidental/consequential losses and/or damages, and
4. For reasonable attorneys fees, and
5. For costs of suit incurred herein, and
6. For such other and further relief as the Court deems just and proper

PLAINTIFF HEREBY DEMANDS JURY

Dated this 17th day of March, 2017

By/s/ George O. West III
GEORGE O. WEST III
Attorney for Plaintiff
DERRICK POOLE

EXHIBIT 4



STAT

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11 Attorney for Plaintiffs
12 **DERRICK POOLE**

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 DERRICK POOLE,

16 Plaintiff,

17 v

18
19
20 NEVADA AUTO DEALERSHIP INVEST-
MENTS LLC a Nevada Limited Liability
21 Company d/b/a SAHARA CHRYSLER,
JEEP, DODGE, WELLS FARGO DEALER
22 SERVICES INC., COREPOINTE INSUR-
ANCE COMPANY, and DOES 1 through 100,
23 Inclusive,

24 Defendants,

CASE NO : A-16-737120-C
DEPT : XXVII

**PLAINTIFF'S SEPARATE STATE-
MENT OF UNDISPUTED MATERIAL
FACTS IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

DATE : November 9, 2017

TIME : 9:00 a.m.

Filed concurrently with :

1. Plaintiff's Exhibits in Opposition to
Defendant's Motion for Summary Judgment]

2. Plaintiff's Opposition to Defendant's
Motion for Summary Judgment

3. Plaintiff's Response to Defendant's Separate
Statement of Undisputed Material Facts]

UNDISPUTED FACT

1 On May 5, 2014, a private third
2 party by the name of Dale Hinton sold
3 a used 2013 Dodge Ram 1500
4 ("vehicle") to SAHARA bearing VIN
5 1C6RR6GT8DS558275

6 2. The person from SAHARA who was
7 personally engaged with and who and
8 dealt with Mr. Hinton, and who
9 purchasing the vehicle from Mr.
10 Hinton on behalf of SAHARA was
11 Joshua Grant, and was the one from
12 SAHARA who personally apprised the
13 vehicle

14 3. On May 5, 2014, Mr. Hinton told
15 Joshua Grant the vehicle had been in a
16 previous accident also gave an Allstate
17 Collision Estimate of Record ("ACE")
18 to Joshua Grant regarding the vehicle.

19 4. Joshua Grant **thoroughly**
20 **reviewed** the ACE.

21 5. SAHARA **admits** that the ACE
22 involves a 2013 Dodge Ram 1500 with
23 a VIN 1C6RR6GT8DS558275 of
24 indicates that it was prepared on
25 March 31, 2014

26 6. SAHARA **admits** that the ACE
27 indicates the vehicle was in a
28 collision/accident on March 26, 2014

7. The ACE received by Joshua Grant
broke down what was actually
repaired on the vehicle and
describes, reflects and itemizes the
nature and extent of the damage to the
vehicle as a result of the previous
collision/accident.

SUPPORTING EVIDENCE

***Exhibit 1 to Defendant's Motion
for Summary Judgment, Exhibit 5,***
Def's Resp. to RFA # 1; ***Exhibit 16,***
appraisal form.

Exhibit 9; depo. of Grant 77: 11-25, 78:
7-19, 79: 3-9, 80: 17-25, 81: 1-8; 111:
11-16; Exhibit 5, Def's RFA resp. to
Plntf's RFA Req. # 10

Exhibit 9; depo of Grant, 81: 21-25, 82:
1-7, 84: 5-14, 96: 24-25, 97: 1-8.¹

Exhibit 9: depo of Grant, 98: 13-23, 99:
2-5.

Exhibit 2, ACE, Exhibit 7, Def's Resp. to
Plntf's RFA # 9; Exhibit 21, Plntf's RFAs

Exhibit 2, ACE; Exhibit 7, Def's Resp. to
Plntf's RFA # 9; Exhibit 21, Plntf's RFAs

Exhibit 9; depo of Grant, 84: 5-14,
Exhibit 2, ACE

¹ Grant also authenticated the ACE
produced and shown to him at his deposition as
the same ACE he was given on May 5, 2017.
Exhibit 9, depo of Grant 98: 2-21

1 8. SAHARA admits The ACE reflects
2 the vehicle sustained \$4,088.70 in
3 property damage to the vehicle as a
4 result of the previous
collision/accident

*Exhibit 2, ACE; Exhibit 7, Def's Resp.
to Plntf's RFA # 31; Exhibit 21, Plntf's
RFAs*

5 9. SAHARA admits the ACE reflects,
6 among other items, that the vehicle had:
• a replaced right bumper bracket.
7 • a repaired left front frame end bracket
• a replaced front bumper.
8 • a replaced radiator support.
• a replaced left outer and inner tie rod.
9 • a replaced aftermarket left stabilizer link
• a repaired front left wheel.
10 • a repainted left front fender

*Exhibit 2, ACE Exhibit 7, Def's Resp. to
Plntf's RFA # 17, 23-30; Exhibit 21,
Plntf's RFAs*

11 10. At the time Joshua Grant
12 purchased the vehicle from Mr. Hinton
13 on behalf of SAHARA, he was the
14 Director of SAHARA's Used Car
Department and held that position at
15 that point for two and half years.²

*Exhibit 9, depo of Grant, 17: 14-23, 18:
11-14, 66: 2-4*

16 11. As SAHARA's Director of Used Car
17 Sales Joshua Grant was in charge of
18 that particular area and aspect of
19 SAHARA's business, as he was the
20 person who established and
instituted SAHARA's policies and
21 practices within SAHARA's used car
22 department respect to: (1) the decision
23 to resell a vehicle as a certified pre
24 owned ("CPO") to the community, (2)
25 the processes by which those policies
were carried out, (3) the inspections
that occurred, and (4) the documents
that were generated by as a result of
the CPO process.

Exhibit 9, depo of Grant, 25: 9-24

26 ² Joshua Grant was also designated by
27 SAHARA as their 30(b)(6) representative with
28 respect to the CPO certification process, sales,
and required disclosures, policies and practices
in a CPO sales etc.. See Ex. 15, notice of 30(b)(6)
depo. for SAHARA

1 12. As Director of SAHARA's Used Car
2 Department, Joshua Grant was
3 responsible for overseeing *all* of
4 SAHARA's used car inventory, used
5 car purchasing, used car wholesaling,
6 used car pricing, used car
advertisment and oversaw the used
car mechanical operations.

Exhibit 9, depo of Grant, 20: 8-15

7 13. As Director of SAHARA's Used Car
8 Department, Joshua Grant would
9 coordinate with SAHARA's service
10 department with respect to the
11 inspections undertaken on SAHARA's
12 used vehicle inventory, including
13 having a certified pre-owned
inspection undertaken on the car that
was going to be resold to the
community as a CPO.

*Exhibit 9, depo of Grant, 20: 16-25,
21: 1-10*

14 14. With respect to Joshua Grant
15 "coordinating with the service
16 department" involving CPO vehicles,
17 he would bring the vehicle to the
18 service department, give the keys and
19 coordinate with the clerk in the service
department with respect to the type of
certification needed on the vehicle.

Exhibit 9, depo of Grant, 21: 1-9

20 15. The policies and practices relating
21 to CPO sales that Joshua Grant
22 established put into place as Director
23 of SAHARA's Used Car Department
were never put in writing.

*Exhibit 9, depo of Grant, 25: 25, 26: 1-
6*

24 16. Joshua Grant, as the Director of
25 SAHARA's Used Car Department, was
26 the one from SAHARA who made the
27 decision to resell the vehicle to the
28 community as a Dodge CPO vehicle

*Exhibit 9: depo of Grant 77: 11-17,
104: 25, 105: 1-10, 106: 18-23, 111: 1-
16*

1 17. Prior to becoming the Director of
2 SAHARA's Used Car Department,
3 Joshua Grant was the Director of Used
4 Car Sales for Avondale Chrysler Jeep
5 Dodge in Avondale Arizona, selling
6 used Dodge vehicles to the community
7 for nine (9) years, from 2004 through
8 2013.

*Exhibit 9, depo of Grant, 19: 16-25,
20: 1-5*

7 18. Joshua Grant has been selling
8 Dodge CPO vehicles to the community
9 for over eleven (11) years and has been
10 in the used car and vehicle dealership
11 industry for 13 years.

*Exhibit 9, depo of Grant, 19: 16-25,
20: 1*

11 19. Joshua Grant has been involved in
12 the sale of over 15,000 (thousand)
13 used vehicles to the community.

*Exhibit 9, depo of Grant, 33: 17-24,
34: 1-2*

13 20. The vast majority of Joshua
14 Grant's expertise and experience
15 revolves around and emphasizes the
16 sale of used vehicles to the community

Exhibit 9, depo of Grant, 34: 8-15

16 21. According to Joshua Grant, based
17 on his intimate familiarity and
18 experience in selling used vehicles to
19 the community, and in his capacity as
20 the 30(b)(6) representative of
21 SAHARA involving CPO vehicles,
22 SAHARA agrees with, follows and
23 subscribes to the advertising statement
24 regarding the sale of Dodge CPO
25 vehicles to the community that ***"our
CPO vehicle must pass a strident
certification process that
GUARANTEES only the finest
late model vehicles get certified."***

*Exhibit 9, depo of Grant, 150: 15-25,
151: 1-8*

1 22. In his capacity as the 30(b)(6)
2 representative of SAHARA involving
3 CPO vehicles in conjunction this
4 intimate familiarity and experience in
5 selling used vehicles to the
6 community, Joshua Grant has
7 acquired an understanding of what
8 things are important to used car
9 buyers when making a decision to buy
a used vehicle, ***which include
safety, value, mechanical
condition, vehicle condition and
price.***

*Exhibit 9, depo of Grant, 34: 16-25,
35: 1-8*

10 23. Based on Joshua Grant's
11 professional experience in selling over
12 15,000 cars within the Dodge
13 environment, including SAHARA, and
14 in his capacity as the 30(b)(6)
15 representative of SAHARA involving
16 CPO vehicles, ***a CPO vehicle
projects to the consumer: (1)
value, (2) quality, (3) safety, (4)
competence, (5) assurance, (6) piece
of mind and (7) trust.***

Exhibit 9, depo of Grant, 50: 5-22

18 24. Based on Joshua Grant's
19 professional experience in selling over
20 15,000 used cars within the Dodge
21 environment, including SAHARA, and
22 in his capacity as the 30(b)(6)
23 representative of SAHARA involving
24 CPO vehicles, ***(1) value, (2) quality,
(3) safety, (4) competence, (5)
assurance, (6) piece of mind and (7)
trust are things that SAHARA
wants to instill and engender
into the mind of a consumer
when purchasing a CPO vehicle.***

*Exhibit 9, depo of Grant, 51: 4-13, 24-
25, 52: 1-18*

1 25. Based on Joshua Grant's
2 professional experience in selling over
3 15,000 used cars within the Dodge
4 environment, including SAHARA, and
5 in his capacity as the 30(b)(6)
6 representative of SAHARA involving
7 CPO vehicles, **the things a**
8 **consumer within the community**
9 **would view and associate with a**
10 **Dodge CPO vehicle would be: (1)**
11 **value, (2) quality, (3) safety, (4)**
12 **competence, (5) assurance, (6) piece**
13 **of mind and (7) trust**

*Exhibit 9, depo of Grant, 50: 23-25,
51:1-12*

14 26. Based on Joshua Grant's
15 professional experience in selling over
16 15,000 used cars within the Dodge
17 environment, including SAHARA, and
18 in his capacity as the 30(b)(6)
19 representative of SAHARA involving
20 CPO vehicles, the buyer within the
21 community ***has the expectation***
22 when buying a Dodge CPO vehicle that
23 it has value, it has quality, ***it is safe,***
24 they have confidence and assurance in
25 buying it, they have peace of mind, and
26 they trust the dealership selling it to
27 them.

*Exhibit 9, depo of Grant, 52: 19-25,
53: 1-6*

28 27. Based on Joshua Grant's
professional experience in selling over
15,000 used cars within the Dodge
environment, including SAHARA, and
in his capacity as the 30(b)(6)
representative of SAHARA involving
CPO vehicles, ***one of the reasons***
why CPO vehicles to through
vehicle inspections is to ensure
that SAHARA does not sell a
vehicle that might be a safety
hazard to the community.

Exhibit 9, depo of Grant, 49: 7-19

1 28. Based on Joshua Grant's
2 professional experience with Dodge
3 CPO vehicles, and in his capacity as
4 the 30(b)(6) representative of
5 SAHARA involving CPO vehicles, **the**
6 **buyer within the community has**
7 **a right to expect** SAHARA is going
to always be truthful, honest and
accurate with them when it comes to
the sale of a CPO vehicle.

Exhibit 9, depo of Grant, 61: 7-19

8 29 Based on Joshua Grant's
9 professional experience in selling over
10 15,000 used cars within the Dodge
11 environment, including SAHARA, and
12 in his capacity as the 30(b)(6)
13 representative of SAHARA involving
14 CPO vehicles, SAHARA has ***vastly***
superior knowledge about the
condition of a CPO vehicle as opposed
to that of the consumer at time of sale.

*Exhibit 9, depo of Grant, 126: 10-25,
127: 1-12*

15 30. Based on Joshua Grant's
16 professional experience in selling over
17 15,000 used cars within the Dodge
18 environment, including SAHARA, and
19 in his capacity as the 30(b)(6)
20 representative of SAHARA involving
21 CPO vehicles, ***SAHARA considers it***
important for the car buyer to
make an informed choice when
purchase a CPO vehicle.

Exhibit 9, depo of Grant, 130: 6-14

1 31. Based on Joshua Grant's
2 professional experience in selling over
3 15,000 used cars within the Dodge
4 environment, including SAHARA, and
5 in his capacity as the 30(b)(6)
6 representative of SAHARA involving
7 CPO vehicles, to help ensure a buyer
8 within the community can make an
9 informed choice and educated
10 decision, it is important for SAHARA
11 to be completely truthful, honest and
12 accurate with the car buyer to make full
13 disclosure to the car buyer who is
14 thinking of purchasing a CPO vehicle.

*Exhibit 9, depo of Grant, 131: 21-24,
132: 1-6, 133: 1-12.*

11 32. Based on Joshua Grant's
12 professional experience with Dodge CPO
13 vehicles, and in his capacity as the
14 30(b)(6) representative of SAHARA
15 involving CPO vehicles, it is important
16 for SAHARA to make full
17 disclosure to a used car buyer
18 involving things that might affect
19 the vehicle's value, safety, desire-
20 ability or marketability

*Exhibit 9, depo of Grant, 65: 5-13,
130: 8-13*

18 33. According to Joshua Grant in his
19 capacity as the 30(b)(6) representative
20 of SAHARA involving CPO vehicles, and
21 his experience in his capacity as Director
22 of SAHARA's Used Car Department, the
23 reason for SAHARA making full
24 disclosure to the buyer within the
25 community about things that might
26 affect the vehicle's value, safety,
27 desirability or marketability is because
28 SAHARA prefers to be upfront, and
honest as possible, legally,
ethically and morally.

Exhibit 9, depo of Grant, 65: 1-20

1 34. Noah Grant, was the Finance and
2 Insurance ("F & I") manager from
3 SAHARA's who was responsible for
4 preparing the closing documents with
the Plaintiff relating to the vehicle.

Exhibit 10, depo of N. Grant, 28: 10-16

5 35. Noah Grant began working for
6 SAHARA after it first opened and held
7 the F & I manager position for two
years.

Exhibit 10, depo of N. Grant, 13: 8-16

8 36. Based on Noah Grant's vast and
9 intimate experience in working within
10 the Dodge dealership industry he has a
11 good understanding of Dodge products,
including the CPO program.

Exhibit 10, depo of N. Grant, 16: 10-22

12 37. Noah Grant, before coming to
13 SAHARA, specifically received training
14 and was in sales meeting involving the
Dodge CPO program.

Exhibit 10, depo of N. Grant, 17: 4-8

15 38. Noah Grant had sold somewhere
16 between 500 to 1000 Dodge vehicles to
17 the community before becoming a F & I
manager at SAHARA.

*Exhibit 10, depo of N. Grant, 20: 19-25,
21: 1-6*

18 39. Based upon Noah Grant's *intimate*
19 *familiarity and experience* with
20 selling Dodge vehicles to the
21 community, Noah Grant also acquired
22 an understanding of what expectations
23 were important to the consumer within
the community when purchasing a used
vehicle.

Exhibit 10, depo of N. Grant, 21: 7-14

1 40. Based upon Noah Grant's sales
2 experience in the Dodge environment,
3 he carried his sales experience with him
4 into the F&I department with respect to
a consumer's expectations involving
Dodge CPO vehicles.

*Exhibit 10, depo of N. Grant, 19: 16-25,
20: 1-4*

5 41. Based upon Noah Grant's
6 experience in selling between 500 to
7 1000 Dodge vehicles to the community,
8 the things consumers within the
9 community would consider important in
10 purchasing a used vehicle would include
1) safety 2) reliability and 3)
affordability.

Exhibit 10, depo of N. Grant, 21: 15-19

11 42. Based on Noah Grant's experience
12 in selling between 500 to 1000 Dodge
13 vehicles to the community, because it
14 would be important to disclose to the
consumer a vehicle's accident history, it
15 **would be equally important to**
16 **disclose to the consumer within**
17 **the community the nature and**
18 **extent of that accident** IF the
dealership KNEW of the nature and
extent of the previous accident.

Exhibit 10, depo of N. Grant, 25: 8-18

19 43. Based on Noah Grant's experience in
20 selling between 500 to 1000 Dodge
21 vehicles to the community, and his work
22 experience at SAHARA, ***if*** SAHARA had
23 knowledge about ***the actual nature***
24 ***and extent of the accident***, meaning
25 they knew what parts were replaced and
26 repaired, the amount of previous
27 accident damage, **those facts would**
28 **be important to disclose to a**
consumer who is buying a CPO
Dodge.

*Exhibit 10, depo of N. Grant, 26: 13-24,
27: 1-5; 31: 20-25, 32: 1-4*

1 44. Based on Noah Grant's experience
2 in selling between 500 to 1000 Dodge
3 vehicles to the community, and his
4 work experience at SAHARA, based on
5 the way he closed deals, if he came into
6 receipt of information that the CPO
7 vehicle Mr. Poole was purchasing had
8 **\$4,088.70 in damage** to it based
9 upon a previous accident, **Noah**
10 **Grant would have disclosed this**
11 **information to Mr. Poole if he**
12 **had knowledge of it.**

Exhibit 10, depo of N. Grant, 29: 9-24,
32: 1-4

13 45. **The reason** why Noah Grant
14 would disclose to the consumer that a
15 CPO had sustained \$4,008.70 in
16 previous is because such information
17 might be important for the consumer
18 to know **based on safety concerns**
19 **regarding the vehicle.**

Exhibit 10, depo of N. Grant, 29: 9-24,
32: 1-9

20 46. Based on Noah Grant's experience
21 in selling between 500 to 1000 Dodge
22 vehicles to the community, and his
23 work experience at SAHARA, because
24 a consumer within the community
25 might associate a **safety issue** with a
26 previous accident, **he believes that**
27 **the nature and extent of that**
28 **accident would also be**
important information to
disclose to the buyer before they
purchased the vehicle.

Exhibit 10, depo of N. Grant, 31: 20-25,
32: 1-4

47. Travis Spruell was the sales person
involved in the Plaintiff's CPO vehicle
sale transaction

Exhibit 12, depo of Spruell, 45: 18-25,
19: 1-4, Decl. of Plntf ¶ 1.

1 48 Travis Spruell has been a vehicle
2 sales person in the car dealership
3 industry since the end of 2009,
beginning of 2010

*Exhibit 12, depo of Spruell, 14: 24-25,
15:1 -3*

4 49. Since the beginning of 2010 Travis
5 Spruell has sold used CPO vehicles at
6 local Ford, Chevrolet and Chrysler
dealerships (SAHARA).

Exhibit 12, depo of Spruell, 15: 6-18

7 50. Based on this experience in selling
8 used vehicles to the community and
9 talking with such consumers with
10 respect to what might be important to
11 them when purchasing a used car, **a**
12 **vehicle's safety** would be something
a consumer would take into account in
purchasing a used vehicle.

Exhibit 12, depo of Spruell 23: 14-25

13 51. Based on Travis Spruell's
14 experience in selling CPO vehicles to
15 the community, because a consumer
16 might be concerned about a previous
17 accident history when buying a used
18 vehicle, it would be important to
19 always be truthful, honest and
accurate **to disclose information**
and facts about : 1) safety, 2)
mechanical condition and 3) its value.

*Exhibit 12, depo of Spruell 26: 20-25,
27: 1-2*

1 52. Based on Travis Spruell's
2 experience, in conjunction with what
3 what SAHARA has trained and taught
4 him to do, Mr. Spruell believes that
5 part of being truthful, honest and
6 accurate with the consumer in giving
7 full disclosures to them regarding
8 information that might affect a
9 vehicle's 1) safety, 2) mechanical
10 condition and 3) its value, **so that**
11 **they can make an informed**
12 **decision** in purchasing a used vehicle.

*Exhibit 12, depo of Spruell 14: 24-25,
15: 1-3, 28: 7-25, 29: 1-5*

13 53. Travis Spruell believes that it is
14 important as a vehicle sales person at
15 SAHARA to always be truthful, honest
16 and accurate, and it would be **equally**
17 **important to disclose the nature**
18 **and extent of an accident to the**
19 **consumer** if the dealer had that
20 information

Exhibit 12, depo of Spruell, 32: 9-22

21 54. Based on Travis Spruell's experience
22 in selling hundreds of certified **CPO**
23 **vehicles** to the community, he believes
24 as a vehicle sales person, that if he knew
25 that the accident reflected on a Carfax
26 actually caused **\$4,088.70** in damage
27 to the vehicle, **he would have**
28 **disclosed this information to Mr.**
Poole in the normal course of selling a
CPO vehicle at SAHARA.

*Exhibit 12, depo of Spruell, 65: 2-25,
66: 1-10, 70: 21-25, 71: 1-13, 21, 25, 72:
1-25, 73: 1-4*

55. The reasons Mr. Spruell would have
disclosed the **\$4,088.70** in damage to
the vehicle to Mr. Poole is because that
would be part of being truthful, honest
and accurate to the consumer within the
community **to make full disclosure**
before they purchased the vehicle

*Exhibit 12, depo of Spruell, 65: 1-25
66: 1-10, 70: 21-25, 71: 1-13*

1 56. Based on the his experience in
2 dealing with hundreds of used car sales,
3 including CPO vehicle and getting to
4 know the consumer's expectations, Mr.
5 Spruell believes it would have been in
6 **important fact for the consumer**
7 within the community who is buying a
8 CPO vehicle to know that the CPO
9 vehicle they are about to purchase
10 sustained **\$4,088.70** in property
11 damage **before** they purchased the
12 vehicle.

*Exhibit 12, depo of Spruell, 65: 22-25,
66: 1-10, 71: 21-25, 72: 1-13.*

13 57. Mr. Spruell has no reason to believe
14 that the ACE was in the used car file
15 relating to the Plaintiff's vehicle, **but if**
16 **the ACE was in the file, Mr.**
17 **Spruell would have shown the**
18 **ACE to Mr. Poole and had him**
19 **sign it.**

*Exhibit 12, depo of Spruell, 68: 11-24,
69: 1-2*

20 58. The reason why Mr. Spruell would
21 have have Mr. Poole sign the ACE **was**
22 **to ensure that the nature and**
23 **extent of the previous accident**
24 **was disclosed to him to ensure he**
25 **had truthful, honest and accurate**
26 **with respect to what he was**
27 **buying.**

Exhibit 12, depo of Spruell, 69: 4-10

28 59. While SAHARA informed and
disclosed to the Plaintiff on the date of
purchase (May 26, 2014) that the vehicle
was in a previous accident via a Carfax,
which Plaintiff reviewed and signed,
Plaintiff was **never informed in any**
manner with respect to any of the
information or the contents of ACE, nor
was he shown the ACE.

*Exhibit 4; Carfax, Exhibit 6; Def's RFA
resp. to RFA # 36, 37 and 38, Decl. of
Plntf. ¶ 4.*

1 60 SAHARA never specifically and/or
2 explicitly informed or communicated to
3 the Plaintiff or gave him any
4 information at time of sale that the
vehicle had :

- 5 • a replaced right bumper bracket.
- 6 • a repaired left front frame end bracket.
- 7 • a replaced front bumper.
- 8 • a replaced radiator support.
- 9 • a replaced left outer and inner tie rod.
- a replaced aftermarket left stabilizer link
- a repaired front left wheel.
- a repainted left front fender.

10 61. When the previous accident was
11 brought to the Plaintiff's attention
12 during the sales process, Plaintiff
13 ***specifically inquired*** about the
14 accident and was told by SAHARA's
15 sales person, Travis Spruell, that it was
16 only a "minor" accident, that the vehicle
17 had been through their 125
comprehensive inspection, and that if
the vehicle was in any significant
accident, they would not be selling the
vehicle to him.

18 62. SAHARA ***admits*** never specifically
19 and/or explicitly informed or
20 communicated to the Plaintiff or gave
21 him any information that the vehicle
22 had sustained \$4,088.77 in previous
collision damage at time of sale.

*Exhibit 6; SAHARA's RFA resp. to Plnt'f
RFA # 36, 37 and 38, Decl. of Plnt'f ¶ 4*

Decl. of Plntf's ¶ 2

*Exhibit 6, SAHARA's RFA resp. to Plnt'f
RFA # 38, Decl. of Plnt'f ¶ 4*

1 63. SAHARA admits has no document
2 or record signed by the Plaintiff that
3 specifically and/or explicitly discloses to
4 the Plaintiff at time of sale that the
5 vehicle had :

- 6 • a replaced right bumper bracket.
- 7 • a repaired left front end bracket.
- 8 • a replaced front bumper.
- 9 • a replaced radiator support.
- 10 • a replaced left outer and inner tie rod.
- 11 • a replaced aftermarket left stabilizer link
- 12 • a repaired front left wheel.
- 13 • a repainted left front fender.

*Exhibit 6, SAHARA's RFA resp. to Plnt'f
RFA # 36*

14 64. The information contained in the
15 ACE with respect to the monetary
16 damage and all the items that were
17 replaced and/or repaired would have
18 been important to the Plaintiff in
19 making his decision purchasing the
20 vehicle.

Exhibit 2, ACE, Decl. of Plnt'f ¶ 5 & 6

21 65. Had the ACE been disclosed to the
22 Plaintiff, he not only would not have
23 purchased the vehicle, but he would not
24 have purchased any vehicle from
25 SAHARA.

Exhibit 2, ACE, Decl. of Plnt'f ¶ 5

26 66. Had the repaired or replaced items
27 in fact # 63 been disclosed to the
28 Plaintiff in the CPO inspection report, he
would not have purchased the vehicle
and would not have done any business
with SAHARA.

Exhibit 2, ACE, Decl. of Plnt'f ¶ 5

29 67. According to Joshua Grant in his
30 capacity as the 30(b)(6) representative
31 of SAHARA involving CPO vehicles, a
32 car buyer within the community has
33 every right to rely on the contents
34 and accuracy and truthfulness of a
35 [CPO] vehicle inspection Ex. ³

*Exhibit 9, depo of Grant, 127: 20- 25,
128: 1; Decl. of Plntf. ¶ 3.*

³ The report referenced in the testimony is
the CPO check list/inspection report at Exhibit 3
to the Exhibits support Plaintiff's Opposition.

1 68. None of the repaired and/or
2 replaced items on the ACE including the
3 ones listed in undisputed fact number
4 63 are listed on SAHARA's CPO check
5 list/inspection report, including on the
second page under the heading
"additional information"

*Exhibit 2, ACE; Exhibit 3, CPO
inspection report*

6 69. On May 8, 2014, (**only three days**
7 **after Joshua Grant entered the**
8 **vehicle into SAHARA's inventory**),
9 the CPO inspection on the vehicle was
10 undertaken by SAHARA's certified and
trained technician and signed the CPO
inspection report.

*Exhibit 5, SAHARA's Resp. to Plntf's
RFA # 2, # 4, and # 5.*

11 70. As part of his normal job duties
12 within his department,, Joshua Grant,
13 as the Director of SAHARA's Used Car
14 Department, was the one who was
15 responsible for bringing vehicles over to
SAHARA's service department for its
125 point CPO inspection.

Exhibit 9, depo of Grant, 21: 1-9

16 71. The vehicle underwent the Dodge
17 125 comprehensive CPO inspection on
18 May 8, 2014 (three days **after** Joshua
19 Grant personally received the ACE in his
possession on May 5, 2014)

*Exhibit 5, Def's resp. to Plntf's RFA Req.
4, Exhibit 9; depo of Grant, 84: 5-14,
96: 24-25, 97: 1-8*

20 72. At the time Joshua Grant, as
21 Director of SAHARA's Used Car Sales
22 Department, brought the vehicle to
23 SAHARA's service department to
24 undergo the CPO inspection, Joshua
Grant **knew** about the ACE, he **knew**
25 the ACE's contents, and was the person
26 who took personal possession of it on
May 5, 2015 from Mr. Hinton, (three
27 days earlier).

*Exhibit 9; depo of Grant, 84: 5-14, 96:
24-25, 97: 1-8, 98: 13-23, 99: 2-5;
Exhibit 2, ACE; Exhibit 5, Def's resp. to
Plntf's RFA Req. # 1, # 7 and # 10.*

1 73. Joshua Grant, as SAHARA's Director
2 of Used Car Sales, ***personally made***
3 the decision to resell the vehicle to the
community as a Dodge CPO.

*Exhibit 9; depo of Grant, 104: 25, 105:
1-10*

4 74. Joshua Grant, as Director of
5 SAHARA's Used Car Sales Department,
6 ***had no policy or practice*** that if he
7 personally had actual documentation of
8 previous repairs undertaken on a vehicle
9 ***which he personally made the***
10 ***decision to resell to the***
11 ***community as a CPO, that would***
12 ***NOT be important for him to pass***
13 ***that information onto the service***
14 ***department BEFORE the***
15 ***technician undertook his 125***
16 ***point CPO inspection.***

Exhibit 9, depo of Grant, 91: 10-20

17 75. Joshua Grant, in his capacity as
18 SAHARA's Director of Used Car Sales, if
19 he had specific, articulable, identifiable
20 information relating to an body shop
21 estimate [ACE] that would reflect the
22 nature and extent of the damage to the
23 vehicle, ***it was NOT something that***
24 ***he would have considered giving***
25 ***the service department before the***
26 ***CPO inspection was done.***

Exhibit 9, depo of Grant, 94: 7-19

27 ***76. Joshua Grant, in his capacity***
28 ***as SAHARA's Director of Used Car***
Sales Department did NOT deem
the nature and extent of a
previous accident to a vehicle as
being important in making the
determination as to whether or
not he would resell the vehicle to
the community as a CPO vehicle.

Exhibit 9, depo of Grant, 104: 6-11

1 77. Joshua Grant, as Director of
2 SAHARA's Used Car Department, ran a
3 Carfax on the vehicle on May 5, 2014

*Exhibit 9, depo of Grant, 99: 2-5, 19-21,
101: 7-23. Exhibit 4, Carfax.*

4 78. As SAHARA's Director of Used Car
5 sales, Joshua Grant had the Carfax in his
6 possession and it indicated the vehicle
7 was in an accident.

*Exhibit 4; Carfax; Exhibit 9, depo of
Grant, 102: 10-17.*

8 79. The Carfax matches the vehicle
9 make, model year and VIN of the
10 Plaintiff's vehicle as reflected on the
11 ACE

Exhibit 4, Carfax; Exhibit 2, ACE

12 80. It was **NOT** custom or practice for
13 either Joshua Grant or for SAHARA's
14 Used Car Department to bring the
15 Carfax over to the service department to
16 allow them to look at it **before** they did
17 their certified inspection

Exhibit 9, depo of Grant, 102:18-23

18 81. Joshua Grant **does not know or
19 recall** if he brought the Carfax
20 involving the Plaintiff's vehicle to
21 SAHARA's service department before
22 they did their CPO inspection on the
23 vehicle.

Exhibit 9, depo of Grant, 102:18-25

24 82. If SAHARA had prior knowledge of
25 certain damage to a vehicle from a body
26 shop estimate, SAHARA **would NOT**
27 **disclose the information on the**
28 **body shop estimate [ACE] to the**
consumer buying a CPO vehicle.

Exhibit 9, depo of Grant, 134: 13-22

1 83. According to Jeff Grant, with respect
2 to SAHARA making "full disclosure" to
3 the about important facts that might
4 affect a vehicle's safety or value, if a
5 vehicle had a little over \$ 4,000.00 in
6 damage, and damage to certain
7 components, and if Jeff Grant had
8 **actual knowledge** of something
9 involving the **nature and extent of**
10 **the damage** to the vehicle, SAHARA
11 does **NOT** think information relating to
the nature and extent of the accident
should be communicated to the
consumer purchasing a CPO vehicle,
even if this information was in the
dealers' knowledge.

Exhibit 9, depo of Grant, 135: 20-25,
136: 1-14

12 84. If SAHARA had actual knowledge
13 that certain components on a vehicle
14 have been damaged, and that vehicle is
15 going to be sold to the community as a
16 CPO, and had knowledge of the type of
17 information reflected on the [ACE],
18 SAHARA **does NOT believe that**
kind of information would be
important to the buyer who is
going to by CPO vehicle.

Exhibit 9, depo of Grant, 137: 3-12, 23-
27, 139: 17-25, 140: 1-10

19 85. Ray Gongora, SAHARA's certified
20 CPO technician who undertook the
21 comprehensive 125 point CPO
22 inspection on the vehicle considered
23 the information on the ACE, based
24 on his experience, to have been
25 important information. and
26 would have wanted to have the
ACE in his possession before he
undertook his CPO inspection. ⁴

Exhibit 11, depo of Gongora, 30: 10-15

27 ⁴ "Exhibit 2" referred to in Gongora's
28 testimony was the ACE attached as Exhibit 2 to
Plaintiff's Exhibits in Opposition to SAHARA's
motion.

1 86. Ray Gongora **has no recollection**
2 if he received the ACE from anyone at
3 SAHARA regarding the vehicle.⁵

Exhibit 11, depo of Gongora, 31: 5-10

4 87. Joshua Grant, Director of SAHARA's
5 Used Car Department, who personally
6 received the ACE from the previous
7 owner of the vehicle, **has no**
8 **recollection** of whether he gave the
9 ACE to Ray Gongora, SAHARA's CPO
10 technician.

*Exhibit 9; depo of Grant 92: 18-25, 93:
1-10*

11 88. According to Mr. Gongora, some of
12 the things and components set forth in
13 ACE **are the same** as those that would
14 be covered by the CPO inspection
15 report.

Exhibit 11, depo of Gongora, 30: 4-9

16 89. According to Mr. Gongora, had the
17 received the ACE before he conducted
18 the CPO inspection on the vehicle, **he**
19 **would have specifically looked at**
20 **the different components that**
21 **were listed on the ACE** that
22 overlapped the same components that
23 are covered in the CPO inspection
24 report, and believes that would be the
25 prudent thing to do.

Exhibit 11, depo of Gongora, 31: 11-21

26 90. Because Joshua Grant, as Director of
27 SAHARA's Used Cart Department, had
28 actually received and had actual
possession of the ACE **on May 5,**
2014, whether or not Mr. Grant gave
the ACE to Mr. Gongora, **SAHARA**
knew or should have known that
the the left front wheel to the
vehicle had been damaged and
repaired as a result of the
previous collision to the vehicle.

*Exhibit 2, ACE at pages 2 & 3 lines
under heading "WHEELS" lines 29-34;
Exhibit 9; depo of Grant, 84: 5-14, 96:
24-25, 97: 1-8; Exhibit 5, Def's resp. to
Plntf's RFA Req. # 1, # 7 and # 10.*

⁵ "Exhibit 2" referred to in Gongora's
testimony was the ACE attached as Exhibit 2 to
Plaintiff's Exhibits in Opposition to SAHARA's
motion.

1 91. SAHARA's certified CPO technician
2 who undertook the CPO inspection on
3 the vehicle, (Ray Gongora), was
4 **trained to recognize the signs**
5 **and/or indications of prior**
6 **collision/ accident damage** to a
7 vehicle that was going to be resold to the
8 community as a CPO vehicle.

Exhibit 5; Def's resp. to Plnt's RFA # 20.

7 92 The ACE **clearly indicates** the left
8 front wheel as being "reconditioned"
9 and that the wheel was sent out to be
10 "rechromed," **or** the front left wheel was
11 replaced with a "recycled" wheel. **The**
12 **definition of "RCY" in the ACE**
13 **means "used parts."**

*Exhibit 2, ACE at pages 2 & 3 lines
under heading "WHEELS" lines 29-34,
Exhibit 7, Def's Resp. to Plnt's RFA
29.*

12 93. . Because Joshua Grant, as Director
13 of SAHARA's Used Cart Department,
14 had actually received and had actual
15 possession of the ACE **on May 5,**
16 **2014,** SAHARA actually knew or should
17 have known that the left front wheel was
18 either "reconditioned" (**meaning re-**
19 **chromed**), or it was a **recycled**
20 **wheel.**

*Exhibit 2, ACE at pages 2 & 3 lines
under heading "WHEELS" lines 29-34,
Exhibit 7, Def's Resp. to Plnt's RFA
29; Exhibit 9; depo of Grant, 84: 5-
14, 96: 24-25, 97: 1-8;*

18 94. According to Fiat Chrysler America
19 ("FCA") official factory position statement
20 regarding "reconditioned" wheels --
21 reconditioned wheels are defined as those
22 that have been "damaged," -- meaning
23 bent, broken cracked or sustained some
24 other physical damage.

*Exhibit 8, FAC position statement, Decl.
of Avillini ¶ 14.*

1 95. The FCA official factory position
2 statement is clear regarding
3 "reconditioned" wheels – "reconditioned"
4 wheel is defined as wheels that have been
5 "damaged," -- meaning bent, broken
6 cracked or sustained some other physical
7 damage, **CAN RESULT IN A**
8 **SUDDEN CATASTROPHIC WHEEL**
9 **FAILURE WHICH COULD CAUSE**
10 **LOSS OF CONTROL AND RESULT**
11 **IN INJURY OR DEATH.**

Exhibit 8, FCA position statement

12 96. More specifically, FCA official
13 factory position statement states:
14 **"replating or chrome plated**
15 **wheels, or chrome plating of**
16 **original equipment is NOT an**
17 **acceptable procedure as this may**
18 **alter the mechanical properties**
19 **and affect fatigue.** FCA warranty
20 does not allow refinishing of wheels
21 under warranty.

Exhibit 8, FCA position statement

22 97. A photo of the left front chromed
23 wheel to the vehicle produced and
24 identified by SAHARA in discovery,
25 which was part of a group of photos
26 showing the repairs and damage to the
27 vehicle as a result of the previous
28 collision, ***shows a sizable chip taken***
out of the rim of the wheel as a
result of the previous collision.

Exhibit 14, photo of wheel, Decl. of
Avillini ¶ 16, Exhibit 17, SAHARA's
initial disclosures

98. A chip taken out the the edge of the
wheel meets the definition of damage
under the FCA position statement on
"reconditioned" wheels.

Exhibit 8, FCA position statement;
Exhibit 14, photo of left wheel of vehicle
during time vehicle was being repaired,
Decl. of Avillini ¶ 16.

1 99. The FCA position statement
2 regarding "reconditioned" wheels
3 **would have or should have been**
4 **known** and/or easily accessible to
5 SAHARA'S given SAHARA is factory
authorized and franchised
Chrysler/Dodge dealer.

*Exhibit 8, FAC position statement, Decl.
of Avillini ¶ 15*

6 100. Given SAHARA's would have or
7 should have known of the FCA official
8 factory position statement regarding
9 "reconditioned" wheels on Dodge
10 vehicles, SAHARA also **knew or**
11 **should have known** that the previous
12 repair to the left front wheel on the
vehicle did not meet factory repair
specifications, and could not have been
properly certified as a CPO vehicle.

*Exhibit 2, ACE, Exhibit 8, FAC position
statement, Decl. of Avillini ¶ 15*

13 101. Whether the left front wheel to the
14 vehicle was repaired by being
15 "rechromed" or replaced with a "used"
16 or "recycled" wheel, as clearly stated in
17 the ACE, either one would **not** meet
Chrysler/ Dodge Factory repair
specifications.

*Exhibit 2, ACE, Exhibit 8, FAC position
statement, Decl. of Avillini ¶ 16*

18 102. In addition to the wheel not being
19 repaired according to factory
20 specifications, there were other repairs
21 on the vehicle from the previous
22 collision that were not repaired
according to manufacturer specifications

*Decl. of Avillini ¶¶ 19 & 20, Exhibit 22,
Veh. Cond Rpt. of Avillini (w/o exhibits)*

23 103. Because the vehicle did not meet
24 Chrysler/Dodge manufacturer repair
25 specifications, the vehicle should never
26 have been certified as a CPO by
SAHARA or resold to the community a
CPO vehicle by SAHARA.

*Decl. of Avillini ¶¶ 14- 20; Exhibit 22,
Veh. Cond Rpt. of Avillini (w/o exhibits)*

1 104. SAHARA ***admits*** it ***actually***
2 ***knew about the ACE and had it in***
3 ***its possession*** on **May 5, 2014** when
4 SAHARA entered the vehicle in their
5 inventory, as well as on **May 8, 2014**
6 when SAHARA undertook the CPO
7 inspection on the vehicle and also on
8 **May 25, 2014** when SAHARA resold
9 the vehicle to the Plaintiff as a CPO
10 vehicle

*Exhibit 9; depo of Grant, 84: 5-14, 96:
24-25, 97: 1-8; Exhibit 2, ACE; Exhibit
5, Def's Resp. to Plntf's RFA 1, 7, & 10*

11 105. Because of the ***nature and extent***
12 of the previous collision/accident
13 damage, the vehicle sustained
14 diminished value, causing the Plaintiff's
15 vehicle at time of sale to worth
16 substantially less on the day he
17 purchased it from SAHARA before he
18 even drove it off the lot.

*Decl. of Avillini ¶¶ 22 and 31, Exhibit 19,
Diminished Value Report of Avillini*

19 105A. The photos produced by SAHARA
20 of the vehicle undergoing repairs and
21 the damaged and replaced parts in those
22 photos are entirely consistent with those
23 reflected on the ACE and identify the
24 same VIN number of the subject vehicle.

Decl. of Avillini ¶ 16.

25 106. As part of the sale transaction
26 involving the vehicle, SAHARA offered
27 and Plaintiff accepted SAHARA giving
28 him \$ 4,000.00 for his trade in which
went towards his down payment under
his contract.

*Decl. of Plntf. ¶ 6, Exhibit 18, Plntf's
Retail Installment Sale Contract.*

107. Plaintiff never would have entered
into the contract for the purchase of the
vehicle had he been fully informed of the
content of the ACE.

Decl. of Plntf. ¶ 5

108. Plaintiff has paid a current total of
\$22,641.94 on the vehicle and has
approximately \$16,766.11 left to pay.

Decl. of Plntf. ¶ 7

1 109. Plaintiff has no expertise with
2 respect to vehicle, vehicle repair.

Decl. of Plntf. ¶ 2

3
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7 Dated this 19th day of October, 2017
8
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10

11 By /s/ George O. West III
12 Law Offices of George O. West III
13 *Consumer Attorneys Against Auto Fraud*
14 Attorney for Plaintiff
15 **DERRICK POOLE**
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PROOF OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

On October 20, 2017, I served the forgoing document(s) described as 1) **PLAINTIFF'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** on interested party(ies) in this action by either fax and/or email, or by placing a true and correct copy and/or original thereof addressed as follows:

JEFF BENDAVID, ESQ
Moran, Brandon, Bendavid, Moran
630 South Fourth Street
Las Vegas, NV 89101
j.bendavid@moranlawfirm.com

NATHAN KANUTE, ESQ
Snell & Wilmer
3883 Howard Hughes Pkwy
Suite 1100
Lass Vegas, NV 89169
nkanute@swlaw.com

☐ **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal service on that same day with first class postage thereon fully prepaid at Las Vegas, NV in the ordinary course of business.

☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office, and/or to the attorney listed as the addressee below.

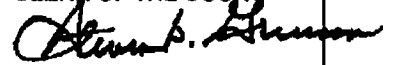
☐ **(BY FAX SERVICE)** Pursuant to consent under NRCP, Rule 5(b), I hereby certify that service of the aforementioned document(s) via facsimile, pursuant to EDCR Rule 7.26(a), as set forth herein.

☒ **(BY EMAIL SERVICE) (Wiznet/email)** Pursuant NRCP, Rule 5(b)(2)(D), and the EDCR on electronic service, I hereby certify that service of the aforementioned document(s) via email to pursuant to the relevant and pertinent provisions of EDCR and NRCP, as set forth herein.

Executed on this 20th day of October, 2017

/s/ George O. West III
GEORGE O. WEST III

EXHIBIT 5



**DISTRICT COURT
CLARK COUNTY, NEVADA**

DERRICK POOLE

CASE NO.: A-16-737120-C

DEPT NO.: 27

PLAINTIFF(S)

VS.

NEVADA AUTO DEALERSHIP
INVESTMENTS, LLC; WELLS FARGO
DEALER SERVICES, INC.;
COREPOINTE INSURANCE
COMPANY

DEFENDANT(S)

**DECISION & ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

These matters having come on for hearing on November 9, 2017; George O. West III, Esq. and Craig B. Friedberg, Esq. appearing for Plaintiff Derrick Poole ("Poole"); Jeffery A. Bendavid, Esq. and Stephanie J. Smith, Esq. appearing for Defendants Nevada Auto Dealership Investments LLC d/b/a Sahara Chrysler, Jeep, Dodge, and Corepointe Insurance Company ("Defendant(s)"), and the Court having heard arguments of counsel, and being fully advised in the premises, COURT FINDS after review:

This case arises out of a sale of a Certified Pre-Owned ("CPO") truck purchased on or about May 26, 2014. Defendants Nevada Auto Dealership LLC and Corepointe Insurance Co. filed a Motion for Summary Judgment on October 2, 2017, and a hearing was held November 9, 2017. The Court took the matter under advisement and set a Status Check for November 21, 2017 for the Court to release a written decision.

1 When Plaintiff purchased his CPO 2013 Dodge Ram from Defendant, Defendant
2 disclosed that the vehicle was in a prior accident. It is undisputed that Defendant produced a
3 CarFax vehicle history report that listed the vehicle was in a prior accident, and the sales
4 representative indicated the same. Plaintiff drove the vehicle for a year, at which point he
5 discovered the vehicle had frame damage. Plaintiff kept driving the vehicle. Plaintiff now
6 contends that Defendants' disclosure of the previous accident at the time of sale was
7 insufficient because Defendants had an Allstate Collision Estimate of Record ("ACE") that
8 stated the nature, extent, and repair cost of the damage from the previous collision.
9

10 Defendant moves for summary judgment under NRCP 56. "Summary judgment is
11 appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories,
12 admissions, and affidavits, if any, that are properly before the court demonstrate that no
13 genuine issue of material fact exists, and the moving party is entitled to judgment as a matter
14 of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).
15

16 Plaintiff argues that each of his claims arise from Defendant's failure to disclose material
17 facts, namely the nature and extent of the damage from the previous collision. Defendant
18 contends that the material fact here is that the vehicle was in a prior accident, not the extent of
19 the damage from that accident.
20

21 NRS 598.0923 only requires the disclosure of material facts. Here, the material fact is that
22 the vehicle was in a prior accident. The duty to disclose under NRS 598.0923 does not extend to
23 the entire effect of the accident, such as a price breakdown of every part and service provided as
24 listed in the ACE. It is undisputed that Defendant disclosed the prior accident to Plaintiff. There
25 is no indication in the record that Plaintiff inquired about the parts and services used to repair the
26 vehicle as provided in the ACE, and such information was then withheld. Plaintiff relied on the
27
28

1 CPO report, which the undisputed evidence shows would only have notated frame damage if a
2 repair, if any, was not up to standard.

3 To the extent Plaintiff argues Defendant made false representations as to the certification of
4 truck, or that the truck was of a particular quality or standard, this argument is flawed. The
5 vehicle went through and passed a 125-point Certified Pre-Owned Vehicle Inspection. Given this
6 certification, Plaintiff cannot argue that Defendant misrepresented that the vehicle was CPO
7 certified, as it was. The sufficiency of the CPO inspection standards is not at issue for this
8 argument, but rather the fact that the vehicle was ultimately certified as pre-owned.
9

10 Plaintiff conceded at the hearing that if the claim for deceptive trade practices fails, the
11 remaining claims for equitable relief must also fail. This Court agrees. Defendant disclosed the
12 material facts about the vehicle, and Plaintiff purchased the vehicle, driving it for at least two
13 years. Thus, there are no grounds to grant equitable relief for Plaintiff.
14

15 THEREFORE, COURT ORDERS for good cause appearing and after review Defendants'
16 Motion for Summary Judgment is hereby GRANTED. The hearing on Motions in Limine set for
17 December 21, 2017 at 10:30 a.m. on Motions Calendar and the Jury Trial set to begin January 8,
18 2018 at 10:00 a.m. are hereby VACATED.
19

20 DATED November 22, 2017
21

22
23 
24 NANCY ALLF
25 DISTRICT COURT JUDGE
26
27
28

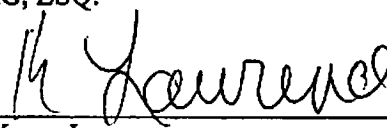
1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on or about the date signed I caused the foregoing document
4 to be electronically served pursuant to EDCR 8.05(a) and 8.05(f) through the Eighth
5 Judicial District Court's electronic filing system, with the date and time of the electronic
6 service substituted for the date and place of deposit in the mail to and/or by fax and mail to:

7 Jeffery Bendavid, Esq.
8 Stephanie Smith, Esq.
9 MORAN BRANDON BENDAVID MORAN

10 George West III, Esq.
11 LAW OFFICES OF GEORGE O. WEST, III

12 Craig Friedberg, Esq.
13 LAW OFFICES OF CRAIG B. FRIEDBERG, ESQ.

14 

15 Karen Lawrence
16 Judicial Executive Assistant
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 6

Allstate Fire and Casualty Ins. Co.**SOUTHWEST AUTO-LAS VEGAS****222 S.Mill Ave****Suite 511****Tempe, AZ 85281****Phone: (800) 347-4488**Claim #:
Workfile ID:000320887250001
afefeb9a**Estimate of Record**Written By: FRED CUNNINGHAM, 3/31/2014 9:27:34 AM
Adjuster: CYNTHIA TRINIDAD, (702) 637-7123 Business

Insured:	DALE HINTON	Policy #:	000916685347	Claim #:	000320887250001
Type of Loss:	Collision	Date of Loss:	03/26/2014 12:00 PM	Days to Repair:	7
Point of Impact:	11 Left Front	Deductible:	500.00		

Owner: DALE HINTON 9642 BORGATA BAY BLVD LAS VEGAS, NV 89147-8080 (702) 232-9622 Other DALEHINTON@AOL.COM	Inspection Location: UNIVERSAL MOTORCARS 5588 SPRING MOUNTAIN RD LAS VEGAS, NV Repair Facility (702) 754-6774 Business	Appraiser Information: fred.cunningham@allstate.com (702) 630-2292	Repair Facility: UNIVERSAL MOTORCARS 5588 SPRING MOUNTAIN RD LAS VEGAS, NV (702) 754-6774 Business (702) 754-6043 Fax info@universalv.com
---	--	---	--

VEHICLE

Year:	2013	Color:	GRAY Int: GRAY	License:	1G5 YYA	Production Date:	10/2012
Make:	DODG	Body Style:	4D PUJ	State:		Odometer:	6632
Model:	RAM 1500 4X2 QUAD BIG HORN	Engine:	8-5.7L-FI	VIN:	1C6RR6GT8DS58275	Condition:	

TRANSMISSION Automatic Transmission	Air Conditioning	Satellite Radio	Reclining/Lounge Seats
POWER Power Steering Power Brakes Power Windows Power Locks Power Mirrors Heated Mirrors Power Driver Seat	Intermittent Wipers Tilt Wheel Cruise Control Keyless Entry Message Center Steering Wheel Touch Controls Navigation System	SAFETY Drivers Side Air Bag Passenger Air Bag Anti-Lock Brakes (4) 4 Wheel Disc Brakes Traction Control Stability Control Front Side Impact Air Bags Head/Curtain Air Bags Hinder Free Device Postraction	Retractable Seats WHEELS 20" Or Larger Wheels PAINT Clear Coat Paint Metallic Paint OTHER Fog Lamps California Emissions
DECOR Dual Mirrors Aftermarket Film Tint Console/Storage	RADIO AM Radio FM Radio Stereo Search/Seek CD Player Auxiliary Audio Connection	SEATS Cloth Seats Bucket Seats	TRUCK Power Rear Window Trailer Hitch Towing Package Running Boards/Side Steps

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Claim #:
Workfile ID:

000020897250001
aefeb9a

Estimate of Record

2013 DODG RAM 1500 4x2 QUAD BIG HORN 4D PU 8-3.7L FI GRAY

Line	Oper	Description	Part Number	Qty	Extended Price \$	Labor	Point
1	#	All Supplements Require Prior Allstate Approval		1	0.00	0.0	0.0
2	#	Supplement Fax#866-487-5751 or Email A2 SUPPS2@ALLSTATE.COM		1	0.00	0.0	0.0
3		FRONT BUMPER					
4		O/H bumper assy		0	0.00	2.6	0.0
5	**	Repl RECOND Bumper chrome w/o air suspension	68160853AB	1	585.00	Incl.	0.0
		NOTE: SALT LAKE CHROME..AVAIL PER KYLE..800-843-1956					
6		Add for fog lamps		0	0.00	0.4	0.0
7	<>	Repl Upper cover primed	68197697AA	1	169.00	Incl.	1.5
8		Add for Clear Coat		0	0.00	0.0	0.6
9		Repl RT Lamp bracket	68196980AA	1	0.00	Incl.	0.0
10		Repl RT Bumper bracket	68196981AA	1	239.00	Incl.	0.0
11		Repl Lower deflector w/painted bumper	68033135AA	1	96.20	Incl.	0.0
12	#	Repair L/F Frame end bracket		1	0.00	1.0	0.2
13		Repl LT Upper cover inner support	55277481AC	1	10.35	Incl.	0.0
14		GRILLE					
15		RAI RAI grille assy		0	0.00	Incl.	0.0
16		FRONT LAMPS					
17		Repl LT Headlampassy w/o multi-beam	68096439AC	1	190.00	Incl.	0.0
		NOTE: VERIFIED LAMP WITH PART # ON LAMP					
18		Aln headlamps		0	0.00	0.5	0.0
19		RADIATOR SUPPORT					
20		Repl Radiator support	68197334AA	1	579.00	3.6	0.0
21		FENDER					
22		Repl LT Fender liner	68110697AD	1	71.45	0.5	0.0
23	*	Rpr LT Fender (STL)		0	0.00	3.5	2.6
		NOTE: PARTIAL REFINISH TO KEEP FROM HAVING TO BLEND INTO DOOR					
24		Overlap Major Non-Adj. Panel		0	0.00	0.0	-0.2
25		Add for Clear Coat		0	0.00	0.0	0.5
26	#	Refin Partial Refinish w/ Full Clear		0	0.00	0.0	-1.2
27		Repl Nameplate "HEMI 5.7 LITER"	68149708AA	1	54.50	0.2	0.0
28		RAI LT Protector		0	0.00	0.2	0.0
29		WHEELS					
30		RAI LT/Front R&L wheel		0	0.00 m	0.1	0.0
31	#	Subl Tire Mount and Balance		1	15.00 X	0.0	0.0
32	#	Subl Wheel reconditioned LF inc marium		1	300.00 X	0.0	0.0
		NOTE: WHEEL REPAIR THRU SINCITY WHEELS & TIRES 255-8473 - WILL HAVE TO BE SENT OUT TO BE					

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Claim #: 000320887250001
 Workfile ID: afeFeb9a

Estimate of Record

2013 DODG RAM 1500 4X2 QUAD BIG HORN 4D P/U 8-5.7L-FI GRAY

RECOMMENDED BY SINCITY AFTER WHEEL REPAIR

33	*	Repl	RCY LT/Front Wheel, alloy 20" code: WPK +25%	1UC565Z0AA	1	250.00	m	0.0	0.0	
			NOTE: TAKE OFF WHEEL - INS QUALITY..BAK AUTO QT # 767777..800-233-8640							
34	#	Subl	Shipping cost on wheel		1	30.00	X	0.0	0.0	
35			FRONT SUSPENSION							
36	**	Repl	A/M LT Stabilizer link	NCP263022	1	95.11	m	0.9	M	0.0
37	#		Check stabilizer bar		1	0.00		0.0	0.0	
38			STEERING GEAR & LINKAGE							
39		Repl	LT Outer tie rod	68185640AA	1	54.50	m	Incl.	M	0.0
40		Repl	LT Inner tie rod	68166678AA	1	58.60	m	1.3	M	0.0
41			MISCELLANEOUS OPERATIONS							
42	**	Repl	A/M Cover Ctr		1	5.00		0.3		0.0
43	#	Subl	2 Wheel Alignment		1	59.95	X	0.0		0.0
44	#		Wet Sand & Polish		1	3.00		0.7		0.0
			NOTE: 0.4 1st Pnl + 0.3 ea addtl pnt							
45			OTHER CHARGES							
46	#		Towing		1	0.00				
SUBTOTALS						2,823.66		15.4		4.1

ESTIMATE TOTALS

Category	Units	Rate	Cost \$
Parts			2,418.71
Body Labor	13.6 hrs @	\$ 44.00 /hr	598.40
Paint Labor	4.1 hrs @	\$ 44.00 /hr	180.40
Mechanical Labor	1.8 hrs @	\$ 85.00 /hr	153.00
Paint Supplies	4.1 hrs @	\$ 31.00 /hr	127.10
Miscellaneous			404.95
Subtotal			3,882.56
Sales Tax	\$ 2,545.81 @	8.1000 %	206.21
Total Cost of Repairs			4,088.77
Deductible			500.00
Total Adjustments			580.00
Net Cost of Repairs			3,508.77

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Claim #:
Workfile ID:

000320887250001
afefeb2a

Estimate of Record

2013 DODG RAM 1500 4X2 QUAD BIG HORN 4D P/U B-5.7L-FI GRAY

ALLSTATE SUPPLEMENT REQUEST SHOP FORM

AZSUPPS2@ALLSTATE.COM or FAX 1-866-487-5751

SUPPLEMENT REQUEST PROCESS INSTRUCTIONS:

PLEASE FILL THIS FORM OUT COMPLETELY AND INCLUDE A WRITTEN SUPPLEMENT WITH ALL INVOICES THAT HAVE BEEN RECEIVED. YOU WILL BE CONTACTED WITHIN 24-48 HOURS.

- 1 CLAIM # _____
2 CUSTOMER: _____
3 VEHICLE: _____
4 SUPPLEMENT AMOUNT: \$ _____
5 SHOP NAME: _____
6 SHOP ADDRESS: _____
7 SHOP CITY/ZIP: _____
8 SHOP CONTACT: PHONE #: _____
9 SHOP EMAIL ADDRESS: _____
10 VEH AT SHOP AND READY FOR INSPECTION? Y () N ()
11 VEHICLE TORN DOWN? Y () N ()
REASON FOR SUPPLEMENT: _____

THIS ESTIMATE IS BASED ON THE USE OF BODY PARTS FOR YOUR MOTOR VEHICLE WHICH WERE NOT MANUFACTURED FOR OR BY THE ORIGINAL MANUFACTURER OF THE MOTOR VEHICLE. ANY WARRANTIES PROVIDED FOR THESE BODY PARTS ARE PROVIDED BY THE MANUFACTURER OR DISTRIBUTOR OF THESE PARTS, NOT BY THE MANUFACTURER OF YOUR MOTOR VEHICLE. PLEASE CONTACT YOUR INSURER TO DETERMINE YOUR RIGHTS REGARDING THE USE OF SUCH BODY PARTS.

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Estimate of Record

2013 DODG RAM 1500 4X2 QUAD 8IG HORN 4D P/U 8-5.7L-FI GRAY

Estimate based on MOTOR CRASH ESTIMATING GUIDE. Unless otherwise noted all items are derived from the Guide DR3TM13, CCC Data Date 3/3/2014, and the parts selected are OEM-parts manufactured by the vehicles Original Equipment Manufacturer. OEM parts are available at OE/Vehicle dealerships. OPT OEM (Optional OEM) or ALT OEM (Alternative OEM) parts are OEM parts that may be provided by or through alternate sources other than the OEM vehicle dealerships. OPT OEM or ALT OEM parts may reflect some specific, special, or unique pricing or discount. OPT OEM or ALT OEM parts may include "Blended" parts provided by OEM's through OEM vehicle dealerships. Asterisk (*) or Double Asterisk (**) Indicates that the parts and/or labor information provided by MOTOR may have been modified or may have come from an alternate data source. Tilde sign (~) Items indicate MOTOR Not-Included Labor operations. The symbol (< >) indicates the refinish operation WILL NOT be performed as a separate procedure from the other panels in the estimate. Non-Original Equipment Manufacturer aftermarket parts are described as Non OEM or A/M. Used parts are described as LKQ, RCY, or USED. Reconditioned parts are described as Recond. Recored parts are described as Recore. NAGS Part Numbers and Benchmark Prices are provided by National Auto Glass Specifications. Labor operation times listed on the line with the NAGS information are MOTOR suggested labor operation times. NAGS labor operation times are not included. Pound sign (#) items indicate manual entries.

Some 2014 vehicles contain minor changes from the previous year. For those vehicles, prior to receiving updated data from the vehicle manufacturer, labor and parts data from the previous year may be used. The CCC ONE estimator has a complete list of applicable vehicles. Parts numbers and prices should be confirmed with the local dealership.

The following is a list of additional abbreviations or symbols that may be used to describe work to be done or parts to be repaired or replaced:

SYMBOLS FOLLOWING PART PRICE:

m=MOTOR Mechanical component. s=MOTOR Structural component. T=Miscellaneous Taxed charge category. X=Miscellaneous Non-Taxed charge category.

SYMBOLS FOLLOWING LABOR:

D=Diagnostic labor category. E=Electrical labor category. F=Frame labor category. G=Glass labor category. M=Mechanical labor category. S=Structural labor category. (numbers) 1 through 4=User Defined Labor Categories.

OTHER SYMBOLS AND ABBREVIATIONS:

Adj.=Adjacent. Algn.=Align. ALU=Aluminum. A/M=Aftermarket part. Blend=Blend. BOR=Boron steel. CAPA=Certified Automotive Parts Association. D&R=Disconnect and Reconnect. HSS=High Strength Steel. HYD=Hydroformed Steel. Incl.=Included. LKQ=Like Kind and Quality. LT=Left. MAG=Magnesium. Non-Adj.=Non Adjacent. NSF=NSF International Certified Part. O/H=Overhaul. Qty=Quantity. Refn=Refinish. Repl=Replace. R&I=Remove and Install. R&R=Remove and Replace. Rpr=Repair. RT=Right. SAS=Sandwiched Steel. Sect=Section. Subl=Sublet. UHS=Ultra High Strength Steel. N=Note(s) associated with the estimate line.

CCC ONE Estimating - A product of CCC Information Services Inc.

The following is a list of abbreviations that may be used in CCC ONE Estimating that are not part of the MOTOR CRASH ESTIMATING GUIDE:

BAR=Bureau of Automotive Repair. EPA=Environmental Protection Agency. NHTSA= National Highway Transportation and Safety Administration. PDR=Paintless Dent Repair. VIN=Vehicle Identification Number.

Claim #: 000320897250001
Workfile ID: afeeb8a

Estimate of Record

2013 DODG RAM 1500 4X2 QUAD BIG HORN 4D P/U 8-5.7L-FI GRAY

IMPORTANT INFORMATION ABOUT THE NAMED INSURANCE COMPANY'S CHOICE OF PARTS POLICY.

THIS ESTIMATE MAY LIST PARTS FOR USE IN THE REPAIR OF YOUR VEHICLE THAT ARE MANUFACTURED BY A COMPANY OTHER THAN THE ORIGINAL MANUFACTURER OF YOUR VEHICLE. THESE PARTS ARE COMMONLY REFERRED TO AS AFTERMARKET PARTS OR COMPETITIVE PARTS, AND MAY INCLUDE COSMETIC OUTER BODY CRASH PARTS SUCH AS HOODS, FENDERS, BUMPER COVERS, ETC. THE INSURANCE COMPANY GUARANTEES THE FIT AND CORROSION RESISTANCE OF ANY AFTERMARKET/COMPETITIVE OUTER BODY CRASH PARTS THAT ARE LISTED ON THIS ESTIMATE AND ACTUALLY USED IN THE REPAIR OF YOUR VEHICLE FOR AS LONG AS YOU OWN IT. IF A PROBLEM DEVELOPS WITH THE FIT OR CORROSION RESISTANCE OF THESE PARTS, THEY WILL BE REPAIRED OR REPLACED AT THE INSURANCE COMPANY'S EXPENSE. THIS GUARANTEE IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE PART. HOWEVER, IF YOU CHOOSE NOT TO USE ONE OR MORE OF THE AFTERMARKET/COMPETITIVE OUTER BODY CRASH PARTS THAT MAY BE LISTED ON THIS ESTIMATE IN THE REPAIR OF YOUR VEHICLE, THE INSURANCE COMPANY WILL SPECIFY THE USE OF ORIGINAL EQUIPMENT MANUFACTURER PARTS, EITHER NEW OR RECYCLED AT THE INSURANCE COMPANY'S OPTION, AT NO ADDITIONAL COST TO YOU. THE INSURANCE COMPANY DOES NOT SEPARATELY GUARANTEE THE PERFORMANCE OF ORIGINAL EQUIPMENT MANUFACTURER PARTS, AND MAKES NO REPRESENTATION ABOUT THE AVAILABILITY OF ANY MANUFACTURER'S GUARANTEE.

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Claim #: 00032068725001
Workfile ID: afeFeb9a

Estimate of Record

2013 DODG RAM 1500 4X2 QUAD BIG HORN 4D P/U 8-5.7L-FI GRAY

ALTERNATE PARTS SUPPLIERS

Line	Supplier	Description	Price
36	NAPA - FPPP Preston Kenium 2999 CIRCLE 75 PARKWAY ATLANTA GA 30339 (800) 538-6272	#NCP2653022 APM LT Stabilizer link	\$ 55.11

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Claim #: 000320887250001
Worksheet ID: afeFeb9a

Estimate of Record

2013 DODG RAM 1500 4X2 QUAD BIG HORN 4D P/U 6-5.7L-FI GRAY

ALTERNATE PARTS USAGE

Year: 2013 Color: GRAY Int: GRAY License: 105 YYA Production Date: 10/2012
Make: DODG Body Style: 4D P/U State: Odometer: 6632
Model: RAM 1500 4X2 Engine: 6-5.7L-FI VIN: 1C6AR6GT8DSS58275 Condition:

Alternate Part Type	# Of Available Parts	# Of Parts Selected
Aftermarket	15	2
Optional OEM	1	0
Reconditioned	3	1
Recycled	0	1

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EXHIBIT 7

DECLARATION OF DERRICK POOLE

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Derrick Poole, hereby declare :

That I am the Plaintiff in this case and I have personal knowledge of the matters in this declaration, and if called as a witness I would and could competently testify:

1. That on May 26, 2014 I went to SAHARA Dodge to purchase a vehicle. When I arrived I was greeted by SAHARA' sales person. I believe his name was Travis. We took a test drive in a used Certified Pre Owned ("CPO") 2013 Dodge Ram Big Horn 1500 Quad Cab ("vehicle"). While I had not purchased a CPO vehicle before, I was generally aware and I believed that they had more value then an vehicle that was not certified. Travis had also indicated to me that CPO vehicles come with a 125 point safety inspection by their service department, that it comes with a Dodge warranty, Carfax, Sirius radio subscription, towing coverage, things that would not come with a non-CPO vehicle.

2. While we were taking the test drive Travis was talking more about the inspection their CPO vehicles go through. Everything seemed fine with the vehicle on the test drive. I looked like a clean vehicle to me. I have no specialized knowledge about vehicles or about seeing the signs of previous accident or collision damage. Travis then mentioned that the vehicle was in a previous "minor" accident. I became a little concerned about that then inquired about the accident. Travis then reiterated that it was only a "minor" accident, that the vehicle had passed the 125 point safety inspection, and that if the vehicle was in a significant accident, they would not be

1 selling it to me and that there was nothing to worry about because it was a CPO vehicle.
2 I was assured by Travis and I took him at his word. I was given assurance by Travis
3 that the vehicle represented more value and quality than a non-certified CPO vehicle,
4 and that it was safe because it passed the 125 point safety inspection by their service
5 department, and I was given piece of mind in purchasing the vehicle.
6

7 3. After the test drive, we went back into the show room. We discussed
8 price, my trade in, payments, those types of things. During the sales process Travis
9 presented a Carfax to me. I briefly reviewed it, it indicated there was an accident.
10 Having been told by Travis that the accident was only minor and that that it passed
11 their safety inspection, I signed the Carfax. It is attached as Exhibit 4. Travis also
12 presented me with a CPO check list. I reviewed that as well. I did not note anything
13 out of the ordinary. It appeared to me that the vehicle passed their safety inspection
14 and it was certified by the dealer. I also signed the CPO check list. It is attached as
15 Exhibit 3.
16

17 4. After my case was filed, my attorney showed me an Allstate Collision
18 Estimate ("ACE") that he had obtained from the dealership through the lawsuit. I was
19 shocked to find this out and was further shocked to find out, based upon review of the
20 Separate Statement my attorney prepared to oppose SAHARA's motion, that SAHARA's
21 Director of Used Car Sales actually knew about and had the ACE in his possession. I
22 was never told about, shown or given the ACE. I was never told or given any
23 information contained in the ACE.
24

25 5. Based upon my review of the ACE, had I been given the ACE on the date
26 of sale, I would not have purchased this vehicle. In fact, I would not have not done any
27 business with Sahara because what is reflected on the ACE was in my mind essentially
28 the opposite of what I was told about the accident by Travis. The ACE was something

1 that would have been important to me to know about as a buyer of a used vehicle in
2 making my decision to purchase this vehicle, especially given it was a CPO vehicle.

3 6. In reviewing the ACE, to me as a layman, I would not have characterized
4 the previous accident as a "minor" accident in any sense of the word. \$4,088.70 in
5 damage is not "minor" to me and it does not seem minor to me in looking at all the
6 things that were repaired or replaced on the vehicle. To me, with all the things repaired
7 or replaced on the vehicle, I would not feel I would be receiving the additional value in
8 purchasing a CPO, and how would I know everything was fixed properly and that it was
9 safe? To me, a repaired left front frame end bracket would be a potential safety issue to
10 me. Even though I don't have any expertise in vehicles or vehicle repair, as a layman
11 who is buying a used vehicle, anything involving or referring to repair of anything to do
12 with the "frame" would be a red flag for me. If I was given the ACE at time of sale, as a
13 layman purchasing a CPO vehicle, the first thing that would have come to my mind was
14 how could this car have been certified as a Dodge CPO given the emphasis Travis was
15 putting on as to how thorough and comprehensive their inspection process was, and
16 how could it have passed their 125 point inspection? I would not have purchased the
17 vehicle and would have walked away from the deal had I known about the ACE. A true
18 and correct copy of my installment contract is attached as Exhibit 20. SAHARA gave me
19 \$ 4,000.00 credit for my trade in towards my down payment on the CPO truck.
20
21

22 7. To date, I have paid \$ 22,641.94 in payments on the vehicle. \$ 16,766.11 is
23 remaining on the balance.
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK POOLE,

Appellant,

v

NEVADA AUTO DEALERSHIP
INVESTMENTS LLC a Nevada
Limited Liability Company d/b/a
SAHARA CHRYSLER, JEEP,
DODGE, and COREPOINTE
INSURANCE COMPANY,

Respondents,

Appeal from the Eighth Judicial District Court, Clark County.
The Honorable Nancy Alff, District Court Judge

Supreme Court Case No: 74808

Electronically Filed
Jun 18 2018 09:21 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No:
A-16-737120-C

APPELLANT'S APPENDIX VOLUME 5

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Consumer Attorneys Against Auto Fraud
George O. West III Esq, State Bar No. 7951
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CRAIG B. FRIEDBERG [SBN 4606]
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Las Vegas, NV 89121
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Email: attcbf@cox.net

Attorneys for Appellant Derrick Poole

Appendix Alphabetical Index

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5	12/23/17	Case Appeal Statement	1012-1050
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1	8/16/17	Defendants' Nevada Auto Dealership Investments LLC D/B/A Sahara Chrysler Jeep, Dodge and Corepoint Insurance Co's Answer to First Amended Complaint	034-047
1	10/2/17	Defendants' Nevada Auto Dealership Investments LLC's and Corepoint Insurance Company's Motion For Summary Judgment	048-225
3	11/3/17	Defendants' Motion to Strike Fugitive Documents Filed by Plaintiff on Order Shortening Time	644-750
4	11/3/17	Defendants' Motion to Strike Declaration of Rocco Avellini Attached to Plaintiff's Opposition on Order Shortening Time	751-783
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1 car. He still would've been making payments on that car. So
2 where is his damages? He had full use of that car, which they
3 concede he would have to, yes, get full use of it.

4 So their other counterargument to these damages is
5 what, Your Honor? Oh, it's diminishment of value. They said
6 there's no evidence that it was actually priced. That's not
7 true, Your Honor. The evidence is is that it was -- the
8 vehicle was sold as a CPO'd preowned vehicle that had a
9 previous accident on it, and it was priced as such.

10 In fact, who doesn't have the evidence that it was
11 actually priced too high? There's none. Here it is. Here's
12 all the exhibits, all their documents, all their testimony.
13 Where is -- there's no document they've produced that says, oh,
14 it was priced at this number, but if they had disclosed the
15 Allstate report, it would've been priced at this number.
16 There's absolutely no evidence in this case, in this summary
17 judgment or these proceedings, in their 90 pages of briefing
18 and the hundreds of pages of exhibits. There's nothing in
19 there that says here's what it would've been worth had -- had
20 they disclosed the Allstate report to him, had they -- had that
21 and that -- and that the price that they had it at did not
22 price in the price of the accident. So there is no evidence.
23 There is no material fact.

24 Your Honor, it is 100 percent speculation;
25 100 percent that they are saying that it was actually priced

1 too high. They're just saying it. Why? Because you can say
2 it. I guess it's a matter of opinion. If you want to come up
3 there and stand up here and say it's priced too high, say it's
4 priced too high, but that's what plaintiff agreed to pay.

5 People purchase cars all the time. We can't go with superior
6 knowledge every time someone buys a car and says, well, the car
7 dealer knew. Well, so did he. He knew all of those facts.

8 I said at the very beginning of my argument, Your
9 Honor, that these facts will not change is that he went to the
10 dealership. He hasn't incurred a single dollar of damages. He
11 won't have any single dollar damages because he can't rescind
12 the contract. They didn't address Skafeedie in their brief,
13 and they didn't address Skafeedie in this courtroom because
14 they can't, because what he's asking for is rescission.

15 Give him all his money back on his payments even
16 though he drove the car for three years, put thousands of miles
17 on it and didn't have a single repair claim. He has no loss of
18 enjoyment use because he never even had to get a loaner car
19 because there was nothing wrong with the truck, and there's
20 still nothing wrong with the truck. So his damages are
21 literally zero because he made his payments and drove his
22 truck, and had he not purchased that car because they told him
23 that, he would've purchased another car and "droven" that one
24 and paid -- and paid and made payments on it.

25 Now, the only evidence they can provide is saying

1 well, the difference between the two cars would've been his
2 damages. There's no evidence of that. There's no testimony of
3 that. In fact, Your Honor, it's disingenuous to come and
4 testify that he wouldn't have -- he would've been so angry when
5 he saw the Allstate report in May 2014 when he got back to the
6 dealership from the test drive that he would've been so angry
7 that they purchased a vehicle that had a previous accident on
8 it; that they provide him their Allstate report, that he
9 would've been so angry you would've never have bought a
10 dealership -- a car from them.

11 What he's saying is they should have done more
12 material disclosure, and had they done the material disclosure
13 at the time he would've been upset. That doesn't make any
14 sense. It's an argument -- it's, Your Honor, it's whimsy
15 speculation. They're doing it. They're making these arguments
16 for the pure purpose of trying to defeat summary judgment
17 because they know that there's absolutely no legal duty past
18 the duty and the actions that have taken place and that it was
19 not material to disclose a \$4,000 damage that occurred on a car
20 that was fully repaired before he purchased it, went through a
21 hundred and twenty-five point inspection, was CPO'd, and he was
22 provided all the warranties.

23 And he got the 100 full benefit and bargain of what
24 he purchased, and if he found a problem with that wheel, he
25 could have taken it in at any time and had it -- and had it

1 replaced under his full warranty that he was provided which was
2 an additional warranty under that CPO. Your Honor, he is not
3 damaged. He has no damages. (Unintelligible) an entire trial
4 his damages would be zero, and damages is an element of the
5 deceptive trade practice.

6 Thank you.

7 THE COURT: Thank you both.

8 This is the defendant's motion for summary judgment.
9 I'm going to take it under advisement. It'll be on my chambers
10 calendar on November 21st. I just need to take another look
11 at NRS and a couple of the cases.

12 I thank you all for the briefs and the excellent
13 arguments today.

14 MR. BENDAVID: Thank you, Your Honor.

15 MR. WEST: Thank you, Your Honor. Have a good
16 weekend.

17 MR. BENDAVID: Your Honor, I feel like we went past
18 our 30 to 40 minutes.

19 THE COURT: You'll know on the -- you'll know on
20 the --

21 MR. BENDAVID: I'm sorry.

22 THE COURT: You'll know on the 21st, and that will
23 determine whether or not your trial's going on December 8th.

24 MR. BENDAVID: Great.

25 MR. WEST: And you'll issue a minute order, Your

1 Honor?

2 THE COURT: I will. And I realize that that's a
3 little bit longer -- it's close to trial -- to have a decision.
4 I hope that's --

5 MR. WEST: Sure.

6 THE COURT: Given the fact that you've just briefed
7 this, you should both be able to do an excellent job at trial
8 if the matter goes to trial.

9 MR. BENDAVID: Thank you, Your Honor.

10 MR. WEST: Thank you, Your Honor.

11 THE COURT: When I say both of you, it's not ignoring
12 cocounsel.

13 MR. BENDAVID: Thank you.

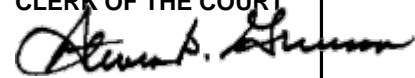
14 (Proceedings concluded 2:44 p.m.)

15 -oOo-

16 ATTEST: I do hereby certify that I have truly and correctly
17 transcribed the audio/video proceedings in the above-entitled
18 case.

19
20 Dana P. Williams

21 Dana L. Williams
22 Transcriber
23
24
25



OPPS

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DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,

Plaintiff,

v

NEVADA AUTO DEALERSHIP INVEST-
MENTS LLC a Nevada Limited Liability
Company d/b/a SAHARA CHRYSLER,
JEEP, DODGE, WELLS FARGO DEALER
SERVICES INC., COREPOINTE INSUR-
ANCE COMPANY, and DOES 1 through 100,
Inclusive,

Defendants,

CASE NO : A-16-737120-C
DEPT : XXVII

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR
ATTORNEY'S FEES AND COSTS**

DATE : February 1, 2018

TIME : 9:30 a.m.

[To be heard concurrently with
Plaintiff's Motion to Retax Costs]

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I

INTRODUCTION

A. FEES UNDER NRS 18.010(2)(b)

Defendants' motion for fees based on NRS 18.010(2)(b) is a gross overreach. There is no basis for any fee award pursuant to 18.010(2)(b). As borne out by all the evidence brought out in opposition to Defendants' motion for summary judgment ("MSJ"), Plaintiff's claims were both legally and factually supportable. Essentially, Defendants' position is that the Plaintiff's claims were "groundless" because they prevailed on summary judgment, and that they are entitled to fees *as a sanction* pursuant to NRS 18.010(2)(b). *Def's Mot. 8:25-27*.

Plaintiff is **not** attempting, via this opposition, to reargue the grant of Defendants' MSJ, as the time to file a motion for reconsideration or under rules 59(e) or 60 has expired. Rather, Defendants' contention that Plaintiff's claims were frivolous, groundless and/or had no factual or legal support makes the allegations in the First Amended Complaint ("FAC"), in conjunction with the myriad of credible evidence presented in opposition to Defendants' MSJ, entirely germane and relevant to rebut Defendants' assertions. Plaintiff disagrees with the Court's grant of Defendants' MSJ, and the reasons for the grant, but the grant of Defendants' MSJ is **not** a basis for any fee award under 18.010(2)(b). There is no basis in this record for any findings that the Plaintiff's claims lacked a factual or legal basis or were otherwise groundless simply because Defendants prevailed on their MSJ.

If this was the standard, then every party who prevailed on summary judgment would be entitled to fees under 18.010(2)(b). However, the granting of summary judgment does **not** equate, in and of itself, to a case being brought or maintained without reasonable grounds merely because the Defendant prevails on summary judgment. *See Baldonado v.*

1 *Wynn Las Vegas, LLC*, 124 Nev. 951, 967–68, 194 P.3d 96, 106–07 (2008) [upholding trial
2 court’s *denial* of fees under 18.010(2)(b) holding that reasonably supportable claims, *while*
3 *not ultimately successful and dismissed on summary judgment*, is ***not a grounds*** for a
4 fee award under 18.010(2)(b)]; *Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 588, 216
5 P.3d 793, 800 (2009) [same]; *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479–80, 117 P.3d
6 227, 238 (2005) [same, but *reversing* court’s grant of fees under 18.010(2)(b) after
7 Defendant prevailed on summary judgment]; *Bower v. Harrah’s Laughlin, Inc.*, 125 Nev.
8 470, 493–94, 215 P.3d 709, 726 (2009) [same].

10 The standard for any award of fees under 18.010(2)(b) is not based upon the
11 “grant” of a motion for summary judgment, it never has been. Rather, “*to support a fee*
12 *award under NRS 18.010(2)(b), there must be evidence in the record supporting the*
13 *proposition that the complaint was brought or maintained without reasonable*
14 ***grounds or to harass the other party.*” *Semenza v. Caughlin Crafted Homes*, 111 Nev.
15 1089, 1095, 901 P.2d 684, 688 (1995) [reversing trial court’s order granting fees under
16 18.010(2)(b)]. “*A claim is groundless if the complaint contains allegations which are not*
17 *supported by any credible evidence at trial.*” *Id.***

19 There are numerous unsupported and/or specious assertions in Defendants’
20 motion about the purported “baseless” grounds for the action, including the Defendants’
21 unfounded contention that Plaintiff had no damages,¹ or that Plaintiff refused to engage
22 in any meaningful or good faith settlement discussions;² **but** the evidence brought out in
23 the opposition, the Court’s order granting Defendants MSJ, and the extensive good faith
24 settlement negotiations that took place, (confirmed via email), do not bear out
25 Defendant’s assertions.
26

28 ¹ *Def’s Mot. 4:12, 5:21, 7:11, 10:6, 12:23, 13:4, 18:14.*

² *Def’s Mot. 4:6-7, 6:15-16, 11:12-13, 12:24-25, 13:3-6, 15:19, 18:26-27.*

1 **B. FEES UNDER NRCP 68**

2 The second basis Defendants assert for fees is under Rule 68. First, on balance,
3 under the factors set forth in *Beattie v. Thomas*, 99 Nev. 579, 588–89, 668 P.2d 268, 274
4 (1983), a discretionary fee award is not warranted in this case.³ This is because Plaintiff's
5 claims were made in good faith, and Plaintiff's rejection of Defendants' offer of judgment
6 was not grossly unreasonable or in bad faith; especially given the Plaintiff's good faith and
7 **extensive engagement** with the Defendants involving attempting settlement of this
8 matter from mid-August 2017 through October 5, 2017. *See Exh 1; emails re: settlement*
9 *negotiations*. Notwithstanding, three out of the four *Beatty* factors do **not** militate
10 towards a discretionary award of fees under Rule 68 in favor of the Defendants.

11 Most significantly, Defendants cannot meet the fourth *Beattie* factor of whether
12 Defendants' fees are "reasonable and justified." This is because defense counsel
13 intentionally did not submit or attach any of their detailed and itemized time sheets to
14 their motion, and have *continued to refuse* to produce unredacted time records despite
15 Plaintiff's requests in writing to do so. As of January 15, 2018, nearly **four weeks** after
16 their motion was filed, Defendants have not provided, and refuse to provide Plaintiff, with
17 **any** time sheets, redacted or unredacted. *See Exhibit 2, emails re: billing records*.

18 Defendants' deliberate failure and/or refusal to attach any detailed and itemized
19 time sheets not only precludes them from meeting their burden on their motion under
20 Rule 54(d), but it also precludes the Court from undertaking its duty to determine the
21 reasonableness and necessity of the time incurred, which is required under **both** *Beattie*,
22
23
24
25

26
27 ³ The *Beattie* factors are: "(1) whether the plaintiffs claim was brought in good faith; (2) whether the
28 defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiffs decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) **whether the fees sought by the offeror are reasonable and justified in amount.**" *Id.*

1 *supra*, and *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).⁴
2 Axiomatically, Defendants' intentional failure and refusal to submit unredacted itemized
3 and detailed billing also prevents Plaintiff from having an adequate and fair opportunity
4 to question the reasonableness and necessity of the time expended under *both* the *Beatty*
5 and *Brunzell* factors.

6
7 The law is crystal clear on this issue. Under Rule 54(d), *Beatty*, and *Brunzell*,
8 *supra*, the moving party has the burden of showing that their time was reasonable and
9 necessary. Furthermore, *when moving for statutory attorney's fees, a party is*
10 ***not entitled to seek fees while at the same time failing and/or refusing to***
11 ***produce or keep hidden from opposing counsel their detailed and itemized***
12 ***time billings, or attempt to submit them "in camera," which is what***
13 ***Defendants have attempted to do here.***⁵ See Supplemental Declaration of Jeffery

14
15
16 ⁴ The *Brunzell* factors are: (1) the qualities of the advocate: his ability, his training, education,
17 experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its
18 intricacy, its importance, *time and skill required*, the responsibility imposed and the prominence and
19 character of the parties where they affect the importance of the litigation; (3) *the work actually*
20 *performed by the lawyer*: the time and skill, attention given to the work; (4) the result: whether the
21 attorney was successful and what benefits were derived. *Id.*

22 Rule 54(d) entitled "*timing and contents of motion*" states in pertinent part: the motion *must* ...
23 specify the judgment and the statute, rule, or other grounds entitling the movant to the award; state the
24 amount sought or provide a fair estimate of it; and be supported by counsel's affidavit swearing that the fees
25 were actually and necessarily incurred and were reasonable, *documentation concerning the amount*
26 *of fees claimed*, and points and authorities addressing appropriate factors to be considered by the court
27 in deciding the motion. The time for filing the motion may not be extended by the court after it has expired.

28 ⁵ Plaintiff requested the itemized billings from Defendants' counsel in writing, which existed as of
December 19, 2015, the date of the filing of the motion, but Defendants' counsel has refused to produce
them. See *Exhibit 2, emails; and GOW decl.*

⁶ See also *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49, 376 P.3d 151, 160 (2016)
[*holding when a party moves for statutory fees under Rule 68, the opposing party is*
entitled, as a matter of due process, to review all the itemized and detailed billings of the
moving party; and also holding that failing to do so is an abuse of discretion and directing
on remand the production of all itemized billing records by the moving party,
citing, Love v. Love, 114 Nev. 572, 582, 959 P.2d 523, 529 (1998),]; *Love v. Love*, 114 Nev. 572,
582, 959 P.2d 523, 529 (1998) [*holding that the party moving for statutory fees is not allowed to submit*
their time billings in camera based on a claim of privilege because it is unfairly prejudicial to the
opposing party because it precludes the opposing party from disputing the amount of fees and their
legitimacy].

1 A. Bendavid in support of Defendants' Motion for Attorneys' Fees and Costs, filed
2 December 21, 2017, ¶¶ 4-5.

3 Additionally, counsel for the party claiming statutory fees also *has the burden* of
4 proving their time was reasonable and necessary via submitting itemized
5 time records which ***must be of sufficient detail*** to enable the court to fulfill its duty to
6 determine with a high degree of certainty that such hours were actually and reasonably
7 expended in the litigation, as to each lawyer, ***and how those hours were allotted to***
8 ***specific tasks.***⁶

10 II

11 **DEFENDANTS ARE NOT ENTITLED TO ANY FEES** 12 **UNDER 18.010(2)(b) BASED ON GROUNDLESS OR FRIVOLOUS** 13 **ACTIONS BECAUSE PLAINTIFF'S CLAIMS HAD BOTH** 14 **FACTUAL AND LEGAL SUPPORT**

15 A. PLAINTIFF'S STATUTORY CLAIMS WERE NOT GROUNDLESS OR 16 FRIVOLOUS AS THERE WAS A REASONABLE BASIS TO BRING AND 17 MAINTAIN THE ACTION

18 Defendants attempt to improperly recast the issue in terms of them prevailing on
19 their MSJ, which is ***not*** the operative inquiry. Defendants contend there was a "lack of
20 evidence substantiating Plaintiff's claims" and that Plaintiff "continued in his claims
21 without reasonable grounds." However, the issue is not whether the Court saw it the
22 Plaintiff's way on summary judgment. Rather, in considering "whether the claims
23 pursued by the losing party against the prevailing party was based upon reasonable
24 grounds" (*Rodriguez v. Primadonna Co., LLC*, 125 Nev. 578, 588, 216 P.3d 793, 800-

25
26 ⁶ See *Case v. Unified Sch. Dist. No. 233, Johnson Cty., Kan.*, 157 F.3d 1243, 1250 (10th Cir. 1998);
27 *Imwalle v. Reliance Med. Prod., Inc.*, 515 F.3d 531, 553 (6th Cir. 2008); *In re Pierce*, 190 F.3d 586, 593
28 (D.C. Cir. 1999); *C Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 945 (9th Cir. 2007); *Norman v. Hous.*
Auth. of City of Montgomery, 836 F.2d 1292, 1303 (11th Cir. 1988); *Louisiana Power & Light Co. v.*
Kellstrom, 50 F.3d 319, 324 (5th Cir. 1995).

1 801 (2009) there must be a showing that the claims were “not supported by **any** credible
2 evidence.” *Semenza*, 111 Nev. At 1095, 901 P.2d at 688. *Such an analysis depends upon*
3 *the actual circumstances of the case.” Id.*

4 Our civil justice system allows for a defense verdict or the granting of summary
5 judgment against a Plaintiff. However, if Plaintiff does not ultimately prevail, it does **not**
6 *ipso facto mean* that Plaintiff’s claims were “groundless,” as Defendants contend. As
7 long as Plaintiff’s claims were reasonably supportable, even though ultimately not
8 successful, there is **no** basis for an award of any fees under 18.010(2)(b), even if
9 Plaintiff’s claims were dismissed on summary judgment. *Baldonado v. Wynn Las Vegas,*
10 *LLC*, 124 Nev. 951, 967–68, 194 P.3d 96, 106–07 (2008).

12 ***Consequently, the issue is whether Plaintiff’s statutory claims under***
13 ***41.600(2)(e) were reasonably supportable.*** And based upon the FAC and the
14 myriad of credible evidence produced in opposition to Defendants MSJ, they were.
15 Moreover, nothing in the Court’s Decision and Order Granting Defendants’ Motion for
16 Summary Judgment (“MSJ order) suggests, even implicitly, that Plaintiff’s claims were
17 brought or maintained without reasonable grounds or that Plaintiff’s claims were not
18 supported by credible evidence, or that Plaintiff suffered no damage. *See MSJ order,*
19 *attached hereto as Exhibit 5.*⁷

21 As set forth in the FAC, attached hereto as Exhibit 3, it was Plaintiff’s contention,
22 pursuant to NRS 598.0923(2), that merely disclosing that the Certified Pre-Owned
23 (“CPO”) 2013 Dodge Ram Truck at issue (“vehicle”) was in a previous accident was **not**
24 sufficient given the nature of a CPO sale, coupled with SAHARA DODGE’s (“SAHARA”)
25

26
27 ⁷ Defendants throughout their brief contend Plaintiff never suffered any damages, but the court never
28 made any such finding or ruling, and Plaintiff’s separate statement clearly rebuts this contention. *SS fact #*
105-107.

1 actual, particularized and superior knowledge involving the precise nature and extent of
2 the damage caused to the CPO vehicle by the previous accident. Most significantly,
3 SAHARA conceded they had **vastly superior knowledge** of the condition of the
4 vehicle at the time of sale. *See Plaintiff's Separate Statement ("SS") in Opposition to*
5 *Defendants MSJ, attached hereto as Exhibit 4, fact # 29.*

6
7 Plaintiff also alleged in the FAC, that the information contained within the ACE
8 would have been material (important) to a reasonable consumer in making a decision of
9 whether or not to purchase a CPO vehicle, especially given the fact that a Dodge CPO
10 vehicle, in the mind of the reasonable consumer, is of a superior quality as compared to
11 a comparable non-CPO vehicle. *See also Exhibit 4, SS fact # 23-26.*

12
13 However, the Court interpreted the statutory duty of disclosure of "material facts"
14 under NRS 598.0923(2) to "not extend to the entire effect of the accident" to the vehicle,
15 and that disclosure that the vehicle was in a previous accident was "the" material fact
16 that SAHARA was required to disclose with respect to the previous accident. *Exhibit 5,*
17 *MSJ Order 2:20-23. Plaintiff respects, but has a fundamental difference of opinion*
18 *with the Court with respect to whether the information Sahara actually had in its*
19 *possession regarding the cost, extent and itemization of the repairs made to the vehicle*
20 *as a result of the pre-sale collision are "material facts in connection with the sale of*
21 *goods" (NRS 598.0923(2)). Likewise, Plaintiff disagrees with the Court's finding that*
22 *SAHARA's characterization of the pre-sale collision as only a "minor" accident and that*
23 *if it was in a significant accident we would not be selling the vehicle to you, was not a*
24
25
26
27
28

1 “material” misrepresentation made to Plaintiff to entice him to purchase the vehicle.⁸

2 But based on the facts alleged in the FAC, (Exhibit 3), and the corresponding evidentiary
3 support for those facts set forth in Plaintiff’s Separate Statement (Exhibit 4) that was
4 presented in opposition to Defendant’s MSJ, the grant of Defendants’ MSJ cannot be
5 equated as Plaintiff’s claims having no reasonable basis in fact or in law.

6
7 Finally, it was the Court’s view that because the vehicle underwent a CPO
8 inspection by SAHARA, and the Plaintiff relied on the CPO inspection report, (of which
9 it was the Court’s view was only required to notate frame damage), there was no
10 misrepresentation that the vehicle was a properly CPO certified vehicle. However,
11 Plaintiff submitted an expert declaration, along with all supporting and foundational
12 facts and other supporting evidence, that the vehicle should **not** have been certified as a
13 Dodge CPO, and should not have passed the Dodge CPO inspection because the vehicle
14 did not meet factory repair specifications. *SS fact # 101-103*. There was no lack of any
15 credible evidence involving this contention either.⁹

16
17 With respect to Plaintiff’s related equitable claims, ***all of which were expressly***
18 ***authorized to be plead under 41.600(3)(b)***, they were all derivative of a violation
19 of NRS 41.600(2)(e). NRS 41.600(2)(e) expressly incorporates the *Nevada Deceptive*
20 *Trade Practices Act* (“NDTPA”), of which any violation of the NDTPA is deemed to be

21
22

⁸ While Plaintiff made a specific inquiry about the nature of the accident when being initially informed
23 that the vehicle was in just a “minor” accident, it was the Court’s view that because the Plaintiff did not
24 specifically “inquire about the parts and services used to repair as reflected in the ACE,” Plaintiff’s inquiry
25 about the previous accident was not sufficient to then require SAHARA to disclose the particular information
26 contained in the ACE. *See*, Exhibit 5, MSJ Order 2:24-26.

27 ⁹ This is especially true given the Court specifically ruled that Mr. Avillini’s declaration was properly
28 submitted and admissible in denying Defendants’ motion to exclude Mr. Avillini’s declaration. *See* Order
Denying Defendants’ [] Motion to Strike Fugitive Documents and Motion to Strike Declaration of Rocco
Avellini Attached to Plaintiff’s Opposition to Defendants’ Motion for Summary Judgment, filed December 9,
2017, 2:9-13.

1 statutory consumer fraud. Consequently, Plaintiff voluntarily conceded at the hearing
2 that if the Court were to grant summary judgment on Plaintiff's statutory 41.600
3 consumer fraud/deceptive trade practices claim, then Plaintiff's equitable claims would
4 also fail. Contrary to Defendants' contention, Plaintiff's equitable claims were not
5 groundless as they were expressly authorized to be plead for any violation of the NDTPA,
6 under 41.600(3)(b).
7

8 **B. THE FACTUAL LANDSCAPE OF THE CASE AND PLAINTIFF'S**
9 **CORRESPONDING STATUTORY CLAIMS**

10 As set forth the FAC at ¶ 31, (*Exhibit 3*), Plaintiff alleged that SAHARA engaged in
11 violations of the NDTPA involving the Plaintiff's financed purchase of a CPO vehicle on
12 May 26, 2014. Plaintiff alleged the following statutory violations:

- 13 A. ***Failing to disclose a material fact*** in connection with the sale of
14 goods. [NRS 598.0923(2) and NRS 41.600(2)(e)]
- 15 B. Represented that goods for sale are of a ***particular standard,***
16 ***quality or grade if he knows or should know*** that they are of
17 another standard, quality, grade, style or model. [NRS 598.0915(7)
and NRS 41.600(2)(e)]
- 18 C. Making a false representation as to the source, sponsorship, approval
19 ***or certification*** of goods for sale. [NRS 598.0915(2) and NRS
41.600(e)]
- 20 D. Making any ***other false representations*** in a transaction. [NRS
21 598.0915(15) and NRS 41.600(2)(e)]

22 The factual support for these claims was set forth in the FAC at paragraphs 19, and
23 21 through 30 which alleged:

- 24 19. More specifically, it is advertised with respect Chrysler/Dodge CPO
25 vehicles that:
- 26 A. When you have a Chrysler Group Certified Pre-Owned vehicle
27 ("CPOV") ***you have far more than just a "used" vehicle. You***
28 ***have confidence. You have pride. You have a great vehicle***
that you can trust. You're certified.

1 B. Every Chrysler, Jeep, Dodge and Ram CPOV can be counted on to go
2 the distance. Our CPO vehicles must pass a strident certification
3 process ***that guarantees only the finest late model vehicles***
4 ***get certified.*** Every vehicle that passes is then subjected to a
comprehensive 125-point inspection and a through reconditioning
process using Authentic Mopar Parts.

5 C. What would you expect to pay to have a qualified technician give this
6 vehicle such a thorough inspection?

7 D. ***Only the finest late model vehicles we have are going to be***
8 ***certified to begin with, so the [CPO] vehicles you are***
checking out on the lot are the best.

9 21. On or about May 6, 2014, SAHARA acquired the vehicle from a private
10 party. That private party informed and specifically told SAHARA's used car
11 manager, Joshua Grant, that the vehicle had been in a previous collision in
12 March of 2014, and also gave Mr. Grant a copy of the body shop repair order
13 relating to the repairs that were undertaken on the vehicle as a result of the
14 previous collision. The body shop estimate, which was in Mr. Grant's
15 possession, indicated the vehicle had \$ 4,088.00 in previous collision
damage, and also disclosed the nature and extent of the previous damage
caused by the accident, based upon the parts and components that were
identified on the repair order and replaced or repaired on the vehicle as a
result of the previous collision.

16 22. That body shop estimate disclosed the following repairs to the
17 vehicle, which included, but were not limited to: a replaced front frame end
18 bracket, a replaced radiator support, front bumper repaired, right inner and
outer tie rods replaced, and the stabilizer link replaced, left front wheel
repaired and left front quarter panel repainted.

19 23. After briefly doing an initial visual assessment and inspection on the
20 vehicle on May 6, 2014, Mr. Grant, at that point, made the initial decision
21 and undertook the initial steps to resell the vehicle as a CPO certified
22 vehicle. On or about May 8, 2017, (three days after the car logged into
23 SAHARA's inventory and given a stock number), the vehicle was brought
24 into SAHARA's service department by Mr. Grant to undergo the
comprehensive CPO inspection process with one of their Chrysler certified
technicians. Mr. Grant did not inform anyone in the service department of
the previous collision the vehicle was in or given the body shop estimate
regarding the vehicle to anyone in the service department.

25 24. At the time of the technician's inspection, all of the aforementioned
26 repairs and replaced parts and components to the vehicle that were present
27 due to the previous collision the vehicle was involved in, were all present
28 and abundantly obvious to the trained eye, including SAHARA's certified
technician. As part of Chrysler/Dodge's comprehensive CPO inspection
process, the technician is required to prepare and sign off on the

comprehensive check list, which the technician did.

25. Notwithstanding, and knowing of and/or having should have known of all the aforementioned items being repaired or replaced on the vehicle, and also having a good idea of the nature and extent of the previous damage and collision to the vehicle, SAHARA's technician did not note any of these items were repaired or replaced, either in the specific enumerated items set forth on the report, or in the area where "additional information" could have been noted on the report. This, notwithstanding that SAHARA's mechanic and SAHARA's used car manager actually knew of the nature and extent of the previous collision, and also knew the car was going to be resold to the community as a CPO vehicle.

26. During the sales process, the SAHARA's salesperson was explaining the many advantages of buying a CPO vehicle, one of which was the comprehensive safety inspection the vehicle undergoes. After the deal was negotiated in the sale's department, Plaintiff was then brought into the F & I department to sign all the closing documents. One of the documents Plaintiff was presented with was a Carfax that indicated the vehicle had been in a previous accident. Plaintiff inquired about the accident and was concerned about the previous accident the vehicle had been involved in, which was not previously disclosed to him.

27. Plaintiff was then told that the vehicle had been through a comprehensive safety inspection and if the previous accident was serious or significant, it would not have been certified a CPO. Plaintiff was then presented and reviewed the CPO inspection report as well that was prepared by SAHARA's technician. Having been told the car had gone through a comprehensive inspection, ***having been assured that the accident was not significant, and not seeing any indication on the CPO inspection report of anything being replaced or repaired or damaged, Plaintiff's concerns regarding the accident were resolved and he went forward with the sale.***

28. Plaintiff not being made aware of nature and extent of the previous collision and repairs to the vehicle, it was in approximately mid-May of 2015, Plaintiff first became aware of the nature and extent of the undisclosed damage to the vehicle, of which SAHARA had actual knowledge of prior to the time of sale, and did not disclose to him.

29. ***This information would have been a material (important) fact any reasonable consumer, including the Plaintiff, would want to know about and would also deem important in making a decision to purchase a used vehicle, especially with respect to a CPO vehicle, given the purchase of a CPO vehicle is to take much of the risk out of purchasing a used vehicle vis-à-vis the vehicle being in a previous significant collision and/or having frame and/or unibody damage and excessive body damage. Had Plaintiff been informed of the nature and extent of the damage to the vehicle which***

1 was in the actual knowledge of SAHARA, he would not have purchased the
2 vehicle and would not have entered into the RISC for the vehicle.

3 30. At all relevant times, SAHARA, as a vehicle dealer within this
4 community, would know that any reasonable consumer, including the
5 Plaintiff, associates a very negative stigma to vehicles which have been in a
6 previous collision or collisions, both as to its safety and as to its value. Such
7 a negative stigma is further heightened with respect to a CPO vehicle given
8 it is the consumer's expectation when purchasing a Chrysler/Dodge
9 certified vehicle that they are avoiding purchasing a vehicle that has any
10 such damage. Furthermore, Defendant SAHARA, as a vehicle dealership
11 who sells hundreds of CPO vehicles to the community, is fully aware of this
12 expectation on the part of the consumer when they choose to decide to
13 purchase a Chrysler/Dodge CPO vehicle. ***The information known to***
14 ***SAHARA relating to the nature and extent of the previous***
15 ***damage to the vehicle, in the mind of a reasonable consumer,***
16 ***would relate to the vehicle's safety and/or dramatically***
17 ***diminished its value, and would be important in making a***
18 ***determination in whether to purchase the vehicle.*** Consumers do
19 not seek to purchase vehicles, especially CPO vehicles, with an accident
20 history, ***and if an accident is disclosed to them and the dealer has***
21 ***actual knowledge of the nature and extent of that previous***
22 ***collision, SAHARA had the obligation to make full and complete***
23 ***disclosure to the Plaintiff relating to all information it had***
24 ***within its possession regarding the previous collision and the***
25 ***nature and extent of that accident, as it would have been***
26 ***material to Plaintiff's decision to purchase the vehicle.***

17 **C. THE MATERIAL FACTS AND CREDIBLE EVIDENCE THAT WAS**
18 **PRESENTED IN OPPOSITION TO DEFENDANTS' MSJ**

18 Keeping in mind the aforementioned factual allegations in the FAC, these facts
19 were all supported by Plaintiff's Separate Statement ("SS") in Support of Plaintiff's
20 Opposition to Defendant's MSJ, (Exhibit 4), along with all the corresponding admissible
21 evidence, -- ***most of which was derived through the sworn testimony of***
22 ***SAHARA's own employees and 30(b)(6) representative.*** See Exhibit 4, SS.

24 **1. SAHARA HAD ACTUAL, PARTICULARIZED AND SUPERIOR**
25 **KNOWLEDGE OF THE NATURE AND EXTENT OF THE DAMAGE THAT**
26 **WAS CAUSED BY THE PREVIOUS COLLISION INVOLVING THE**
27 **PLAINTIFF'S CPO VEHICLE**

26 Three weeks prior to Defendant SAHARA selling the vehicle to the Plaintiff, on
27 May 5, 2014, SAHARA purchased the vehicle from a private third party. SS fact # 1. That
28

1 third party informed SAHARA's director of used car sales, (Josh Grant), that the vehicle
2 had been in a previous accident two months earlier in March of 2014. *SS fact # 2-3* The
3 third party also gave Josh Grant an Allstate Collision Estimate ("ACE"). *SS fact # 3-4*.

4 ~~The ACE is attached as Exhibit 6.~~ The information contained in the ACE revealed the
5 following about Plaintiff's CPO vehicle, among other information:

- 6 • That the CPO vehicle had sustained \$4,088.77 in property damage as a
7 result of the previous collision.
- 8 • That as a result of the previous collision, the vehicle had the following
9 components, parts and items replaced or repaired:
 - 10 • a replaced front bumper
 - 11 • a repaired left front frame end bracket
 - 12 • a repainted left front fender
 - 13 • a replaced right bumper bracket
 - 14 • a replaced radiator support
 - 15 • a replaced left outer and inner tie rod
 - 16 • a repaired front left wheel, and
 - 17 • a replaced aftermarket left stabilizer link¹⁰

18 Again, SAHARA conceded that it had **vastly superior knowledge** about the
19 condition of a CPO vehicle as opposed to that of the consumer at time of sale. *SS fact #*
20 *29.*¹¹

21 **2. PLAINTIFF PRESENTED CREDIBLE EVIDENCE OF: (1) WHAT IS AN**
22 **IMPORTANT (MATERIAL) FACT TO THE REASONABLE CONSUMER IN**
23 **THE COMMUNITY WHEN BUYING A USED DODGE CPO VEHICLE, (2)**
24 **WHAT A DODGE CPO VEHICLE PROJECTS AND/OR COMMUNICATES**
25 **TO THE CONSUMER AND (3) WHAT IS IMPORTANT TO DISCLOSE TO A**
26 **CPO CONSUMER**

27 SAHARA conceded that the things that **are important** to a used car buyer when
28 making a decision to buy a used vehicle, include: (1) safety, (2) value, (3) mechanical

¹⁰ This is only a partial list. The full list of all items is disclosed and set forth on the Allstate Collision Estimate of Record ("ACE") at Exhibit 6.

¹¹ This was testified to by SAHARA's 30(b)(6) representative (Josh Grant) involving Dodge CPO sales to the community.

1 condition, (4) vehicle condition and (5) price. *SS fact # 22.* SAHARA further conceded
2 that it is ***important for SAHARA to make FULL DISCLOSURE*** to a used car buyer
3 involving things that might affect the vehicle's (1) value, (2) safety, (3) desirability or (4)
4 marketability. *SS fact # 32.*

5 SAHARA further conceded that the things consumers within the community
6 associate with a CPO and what a CPO vehicle projects *to the consumer* are: (1) value, (2)
7 quality, (3) safety, (4) competence, (5) assurance, (6) piece of mind and (7) trust, and
8 that these are the very things that SAHARA wants to ***instill and engender*** into the
9 mind of a consumer when purchasing a CPO vehicle. *SS fact # 23-25.*

11 SAHARA further conceded that the consumer within the community ***has the***
12 ***expectation*** when buying a Dodge CPO vehicle that it has: (1) value, (2) it has quality,
13 (3) it is safe, (4) they have confidence and assurance in buying it, (5) they have peace of
14 mind, and (6) ***they trust the dealership selling it to them.*** *SS fact # 26.*¹²

16 A fact is "material" if it concerns a subject reasonably relevant to the transaction at
17 issue and if a reasonable person would attach importance to that fact. See *Powers v.*
18 *United Services Auto. Ass'n*, 114 Nev. 690, 962 P.2d 596 (1998) ("*Powers I*") and *Powers*
19 *v. United Services Ass'n*, 115 Nev. 38, 979 P.2d 1286 (1999) ("*Powers II*"). See also case
20 citations in fn. 5 to Pntf's Opp. to Defs' MSJ set forth below.¹³

22 ¹² All of these material facts were testified to by SAHARA's 30(b)(6) representative (Josh Grant)
23 involving Dodge CPO sales to the community.

24 ¹³ See *Totz v. Cont'l Du Page Acura*, 236 Ill. App. 3d 891, 899, 602 N.E.2d 1374, 1379 (1992) [***holding***
25 ***in statutory consumer fraud context that dealer's failure to disclose previously repaired***
26 ***damage and failure to disclose vehicle was in a previous severe wreck, which the dealer***
27 ***knew about, was a "material" fact in a used vehicle sale transaction*], *Brennan v. Kunzle*, 154
28 P.3d 1094, rev'd on other grnds, (Kan. App., 2007) [***holding an undisclosed matter is "material,"***
as element of fraud by silence, if it is one to which a reasonable man would attach
***importance in determining his choice of action in the transaction in question*], *Smith v. KNC*
Optical, Inc.*, 2009 WL 2581866 (Tex. App. Dallas, 2009) [*reaffirming previous Texas Appellate
opinions holding that a "material" fact for purposes of establishing material
misrepresentation as element of fraud claim, means a reasonable person would attach****

1 Consequently, in this case, a “material” fact would have been an
2 “important” fact that a reasonable consumer within the community would
3 have attached importance to when purchasing a Dodge CPO vehicle, and
4 would have influenced a CPO buyer’s decision with respect to the purchase
5 of a Dodge CPO vehicle.
6

7
8 **3. PLAINTIFF PRESENTED CREDIBLE EVIDENCE THAT THE**
9 **INFORMATION CONTAINED IN THE ACE: (1) WOULD BE IMPORTANT TO**
10 **A DODGE CPO PURCHASER, (2) SHOULD HAVE BEEN DISCLOSED TO**
11 **THE PLAINTIFF, AND (3) PLAINTIFF ALSO WOULD HAVE FOUND THIS**
12 **INFORMATION IMPORTANT IN MAKING A DECISION NOT TO**
13 **PURCHASE THE VEHICLE**

14 importance to and would be induced to act on the information in determining his choice of
15 actions in the transaction in question], *Weinstat v. Dentsply Intern., Inc.*, 103 Cal.Rptr.3d 614 (Cal.
16 App. 2010) [holding the issue of materiality, in a Deceptive Trade Practices cause of action
17 based on fraudulent or deceptive practices, is whether a reasonable person would attach
18 importance to the representation or nondisclosure in deciding how to proceed in the
19 particular transaction], *Brown v. Bennett*, 136 S.W.3d 552 (Mo. App. W. Dist., 2004) [holding acts
20 to which a reasonable person might be expected to attach importance in making one's
21 choice of action are material, for purposes of a fraud claim]; *Inkel v. Pride Chevrolet-Pontiac,*
22 *Inc.*, 945 A.2d 855 (Vt. 2008) [holding under Consumer Fraud Act, the question is what a
23 reasonable person would regard a fact as important in making a decision to purchase]
24 *Briggs v. American Nat. Property and Cas. Co.*, 209 P.3d 1181 (Colo.App., 2009) [holding undisclosed
25 facts are “material,” for purposes of a fraudulent concealment, negligent
26 misrepresentation by omission claim or consumer protection act claim, if the consumer's
27 decision might have been different had the truth been disclosed], *Carcano v. JBSS, LLC*, 684
28 S.E.2d 41 (N.C. App., 2009). [holding a fact is a “material fact” if had it been known to the party,
 would have influenced that party's decision in making the contract at all], *Casavant v.*
 Norwegian Cruise Line, Ltd., 919 N.E.2d 165 (Mass. App.) [holding that respect to nondisclosure
 under deceptive trade practices act determining whether the nondisclosure was a material
 fact depends on whether the plaintiff likely would have acted differently but for the
 nondisclosure], *Dubey v. Public Storage, Inc.*, 918 N.E.2d 265 (Ill. App. 2009) [holding “material”
 fact for purposes of a claim for consumer fraud act and common law fraud is where a buyer
 would have acted differently knowing the information, or if it concerned the type of
 information upon which a buyer would be expected to rely in making a decision regarding
 the purchase of the product], *Yazd v. Woodside Homes Corp.*, 143 P.3d 283 (Utah 2006) [holding to
 be “material,” the information with respect to fraudulent concealment action must be
 important, which, in turn, can be gauged by the degree to which the information could be
 expected to influence the judgment of a person buying property or assenting to a particular
 purchase price], *Colaizzi v. Beck*, 895 A.2d 36 (Pa. Super., 2006) rev'd on other grnds, [holding a
 misrepresentation is material, for purposes of establishing common law fraud, if it is of
 such character that if it had not been misrepresented, the transaction would not have been
 consummated].

1 It was not unreasonable for Plaintiff to bring and maintain the statutory claims
2 presented in the FAC where SAHARA's own sales and F&I employees, who were directly
3 involved in the sale of the Plaintiff's CPO vehicle, testified that had they known about the
4 ACE, they would have considered that information to have been "important" (material) to
5 a CPO consumer and it ***should have been disclosed*** to a potential buyer of a Dodge
6 CPO vehicle, ***including the Plaintiff***.
7

8 Travis Spruell, who was SAHARA's sales person involved in the sale of the vehicle
9 to the Plaintiff, testified that he had no knowledge about the ACE. However, based upon
10 his experience in selling hundreds of CPO vehicles to the community, Mr. Spruell
11 testified:

- 12 • It would be ***important to disclose the nature and extent of a previous***
13 ***accident to the consumer***, if the dealer had that information. *SS fact # 53*
- 14 • Had he been aware that there was \$4,088.70 in damage to the vehicle caused
15 by a previous accident, ***he would have disclosed that information to***
16 ***Plaintiff***. *SS fact # 54.*
- 17 • It ***would have been an important fact*** for a buyer of a Dodge CPO vehicle
18 to know that the vehicle had ***sustained \$4,088.70 in damage*** prior to
19 purchasing the vehicle. *SS fact # 55.*
- 20 • Had he been aware of the existence of the ACE, ***Mr. Spruell would have***
21 ***shown the ACE to the Plaintiff***. *SS fact # 57.*

22 Noah Grant was SAHARA's F&I manager. He was responsible for preparing the
23 closing documents on the Plaintiff's vehicle. He indicated he had no knowledge of the
24 ACE; however, based on his experience in selling hundreds of Dodge vehicles to the
25 community, he testified:

- 26 • Because it was important to disclose a vehicle's accident history, ***it would***
27 ***have been equally important to disclose to a consumer the nature***
28 ***and extent of the previous accident***, if the dealership knew of the nature
and extent of the previous accident. *SS fact # 42.*

- 1 • The actual nature and extent of a previous accident, (*meaning the dealer knew*
2 *what parts were replaced and repair and the amount of the previous accident*
3 *damage*), **would have been important information to disclose to a**
4 **buyer of a Dodge CPO vehicle.** SS fact # 43 and 46.
- 5 • If Mr. Grant had knowledge that the CPO vehicle Mr. Poole was purchasing had
6 \$4,088.70 in damage caused by a previous accident, **Mr. Grant would**
7 **have disclosed that information to Plaintiff.** SS fact # 44.
- 8 • The reason why Mr. Grant would disclose to the consumer that a CPO vehicle
9 had sustained \$4,088.70 in previous damage is ***because such***
10 ***information might be important for the consumer to know based***
11 ***on safety concerns regarding the vehicle.*** SS fact # 45.

12 Finally, the information reflected on the ACE ***would have been important to***
13 ***the Plaintiff*** in making a decision as to whether he would have purchased the vehicle in
14 the first place. Had he known this information, he would ***not*** have purchased the vehicle
15 and entered into the contract or even done any business with SAHARA. SS fact # 107 and
16 *Exhibit 7, Decl. of Plntf at ¶ 4-6 that was attached to Plntf's Opp. to Defs' MSJ.*

17 4. PLAINTIFF PRESENTED CREDIBLE EVIDENCE THAT SAHARA: (1)
18 ***NEVER DISCLOSED ANY OF THE SPECIFIC INFORMATION CONTAINED***
19 ***IN THE ACE TO THE PLAINTIFF INVOLVING HIS CPO VEHICLE***
20 ***PURCHASE AND (2) SAHARA AFFIRMATIVELY MISREPRESENTED***
21 ***THE NATURE AND EXTENT OF THE PREVIOUS ACCIDENT***

22 It was ***undisputed*** that SAHARA had actual knowledge of the specific
23 particularized information involving nature and extent of the damage caused by the
24 previous accident, and ***never communicated*** or disclosed any of the specific contents
25 of the ACE to the Plaintiff at time of sale. SS fact # 3-5, 59, 60 & 62.

26 Plaintiff also ***affirmatively inquired*** with SAHARA's sales person, (Travis
27 Spruell), about the accident after it was initially disclosed to Plaintiff by Mr. Spruell. Mr.
28 Spruell told Plaintiff that it was just a "minor" accident, that it had gone through the 125
CPO safety inspection, and that if the vehicle had been in significant accident, SAHARA
would not be selling the vehicle to him. SS fact # 61. ***This fact was uncontroverted***

1 **by SAHARA in either their MSJ or in their reply brief.** The information
2 contained on the ACE did **not** comport with the description of the collision as represented
3 by Mr. Spruell to the Plaintiff. *Ex. 6, ACE, and Ex. 7, Dec. of Plntf in Opp. to MSJ ¶ 2-6.*

4
5 **5. PLAINTIFF PRESENTED CREDIBLE EVIDENCE THAT THE VEHICLE**
6 **SOLD TO THE PLAINTIFF: (1) DID NOT MEET CPO STANDARDS, (2) DID**
7 **NOT MEET CHRSYSLER MANUFACTURING REPAIR SPECIFICATIONS,**
8 **(3) SHOULD NOT HAVE BEEN SOLD AS A DODGE CPO VEHICLE AND (4)**
9 **PLAINTIFF SUSTAINED DAMAGES**

10 Plaintiff presented the declaration of Mr. Avillini, Plaintiff's auto expert in
11 opposition to Defendants' MSJ. His opinions were ruled admissible by the Court. Mr.
12 Avillini opined that the vehicle did **not** meet CPO standards and SAHARA should **not**
13 have held out or sold the vehicle as a Dodge CPO. *SS fact # 101-103.* Furthermore,
14 because of the nature and extent of the damage caused by the previous collision, as
15 reflected on the ACE, the vehicle had sustained significant diminished value. *SS fact #*
16 *105.* Plaintiff would **not** have entered into the contract for the sale of the vehicle giving
17 SAHARA \$4,000.00 down in trade, and would **not** have purchased a vehicle that was
18 intrinsically worth several thousand dollars **less** because of the nature and extent of the
19 previous accident that was never disclosed to the Plaintiff. *SS fact # 106-107, and Exhibit*
20 *7, Decl. of Plntf at ¶ 2-6 that was attached to Plntf's Opp. to Defs' MSJ.* Had Plaintiff been
21 given the ACE, he never would have purchased the vehicle. *SS fact # 106-107, and Exhibit*
22 *7, Decl. of Plntf at ¶ 2-6 that was attached to Plntf's Opp. to Defs' MSJ.*

23 **III**

24 **ON BALANCE THE BEATTIE FACTORS DO NOT MILITATE**
25 **IN FAVOR OF DEFENDANTS FOR PURPOSES OF A**
26 **DISCRETIONARY AWARD OF ATTORNEYS FEES UNDER RULE 68**

27 As a threshold matter, while Rule 68 is designed to encourage settlement, it should
28 not be used as a mechanism to unfairly force plaintiffs to forego legitimate claims. *Beattie,*
supra. Furthermore no one factor under *Beattie* is outcome determinative, and each

1 factor should be given appropriate consideration. *Yamaha Motor Co., U.S.A. v.*
2 *Arnoult*, 114 Nev. 233, 252 n. 16, 955 P.2d 661, 673 n. 16 (1998).

3 **A. WHETHER PLAINTIFF'S CLAIMS WERE BROUGHT IN GOOD FAITH**

4 As set forth in section II , *supra*, given the claims and allegations plead in the FAC,
5 all of which have ample and credible evidentiary support, as demonstrated by the
6 evidence presented in Opposition to Defendant's MSJ, Plaintiff's claims were brought in
7 good faith. Defendants' assertions that Plaintiff's claims lacked evidence, were
8 unsubstantiated or were otherwise unsupported are not borne out by the record.
9

10 **B. WHETHER DEFENDANTS' OFFER OF JUDGMENT WAS REASONABLE AND IN**
11 **GOOD FAITH BOTH IN ITS TIMING AND AMOUNT**

12 Given the extensive settlement negotiations that *both parties* engaged in from
13 August 17, 2017 all the way through October 5, 2017, the relative amounts of the party's
14 multiple offers and counter-offers that were exchanged during that time, (*see Exhibit 1;*
15 *emails*), there is no real credible dispute that Defendants' lump sum offer of \$ 45,000.00,
16 inclusive of all damages, attorney's fees and costs was not reasonable and in good faith.
17 However, it is these same facts regarding settlement that militate against a finding that
18 the third *Beattie* factor favors Defendants.

19 **C. WHETHER PLAINTIFF'S DECISION TO REJECT THE OFFER WAS**
20 **GROSSLY UNREASONABLE OR IN BAD FAITH**

21 As Defendants point out in their motion, a court may consider offers of settlement
22 in determining whether discretionary fees should be awarded under the statute. *Parodi*
23 *v. Budetti*, 115 Nev. 236, 242, 984 P.2d 172, 176 (1999). Defendants portray Plaintiff as
24 recalcitrant and entirely unwilling to engage in good faith settlement negotiations. This
25 is simply not true and is not born out by the emails between counsel involving extensive
26 settlement negotiations. *Exhibit 1; settlement emails*. Contrary to Defendants' assertions,
27 settlement negotiations were not a "one way" street, as both parties were extensively
28

1 involved and pursuing settlement negotiations in this case between August 17, 2017 all
2 the way through October 5, 2017. *See Exhibit 1 and GOW Decl. at ¶ 2.*

3 Plaintiff did not ignore settlement, but the emails at Exhibit 1 demonstrate the
4 Plaintiff openly pursued settlement possibilities with the Defendants. The further show
5 that Plaintiff's counsel was continually communicating and following up with Defendants'
6 counsel, and the parties exchanged multiple offers and counter-offers and had numerous
7 conversations, both telephonically and in person, involving those offers and counter-
8 offers. *See Exhibit 1, 001-021 and GOW Decl. ¶ 2.*

10 However, because this was a statutory consumer fraud claim brought under NRS
11 41.600, attorney's fees must be a topic of discussion as 41.600(3)(c) has a mandatory one-
12 way attorney's fee shifting provision to a prevailing 41.600 claimant. Consequently, the
13 topic of payment of reasonable attorney's fees and costs under a 41.600 consumer fraud
14 claim is entirely proper and germane with respect to any settlement discussions and/or
15 offers, and Plaintiff's and Defendant's counsel had many settlement discussions about
16 this issue. *See Decl. of GOW.*

18 As set forth in more detail below and as confirmed by the settlement emails at
19 Exhibit 1, after Defendants first offer was made in September 5, 2017, no allocation for
20 any fees and costs, after consultation with the client, it was rejected. Later that same day,
21 Plaintiff made his first counter-offer. This counter-offer required SAHARA to pay off the
22 balance on the Plaintiff's vehicle in the amount of \$13,700.00, and Plaintiff would retain
23 the vehicle and absorb the diminished value loss. Plaintiff has already paid over
24 \$22,000.00 under the contract towards a vehicle that was worth several thousand less at
25 time of sale because of the nature and extent of the previous collision. Plaintiff's offer also
26 required SAHARA to pay reasonable fees and costs. ***At that time*** attorney's fees were a
27 total of \$37,226.00, and costs were \$5,330.00, *which were incurred over the course of*

1 16 months of litigation. See Exhibit 1; 012. **Plaintiff's counter-offer totaled**
2 **\$56,296.00, which included all damages, fees and costs.** Defendants offer of
3 judgment was in the amount of **\$45,000.00, which was also inclusive of all damages,**
4 **fees and costs.**

5 **By no stretch was Plaintiff or his counsel ever "in the stratosphere"**
6 **on settlement, or otherwise unrealistic, and was at all times negotiating**
7 **good faith with respect to settlement in this case.** See settlement emails at
8 **Exhibit 1.**

9
10 Notwithstanding, Defendants contend that this case was attorney fee driven. It
11 was not -- either with respect to Plaintiff including attorney's fees and costs in any
12 demand, (given this was a mandatory statutory fee shifting case under 41.600), or with
13 respect to their amount. Consequently, a short discussion about the reasons behind
14 statutory attorney fee shifting under 41.600 would be germane at this point.

15
16 Under the American Rule, unless there is a rule, statute or contract, each side is to
17 bare their own attorney's fees and costs. See *Smith v Crown Fin. Servs.* 111 Nev. 277, 281,
18 890 P.2d 769 (1995). However, mandatory statutory fee shifting provisions, such as those
19 found in Nevada's Consumer Fraud Statute, (NRS 41.600(3)(c)), are an exception to the
20 American rule. Statutory fee shifting enables the consumer to venture out into the same
21 legal market place as a financially superior Defendant, and retain an attorney of equal
22 caliber and/or competency to take on consumer fraud cases of this type. The Legislative
23 and public policy objectives behind consumer protection fee shifting statutes are clear, to
24 discourage or otherwise eradicate certain conduct which the Legislature has found to be
25 deleterious to both the consumer and business marketplace, and to enforce important
26 statutory rights.
27
28

1 This private enforcement mechanism, effectuated through statutory fee shifting,
2 not only significantly aids and complements public agencies that have very limited
3 resources in which to enforce the NDTPA, but more importantly, the Legislature made the
4 decision to ***privately enforce*** the provisions of the NDTPA via NRS 41.600(2)(e), so as
5 to enable and ensure robust enforcement of its provisions relating to deceptive trade
6 practices involved in the retail sales of goods to the community. However, what should
7 not be lost on the Court is that, next to their home, the second most expensive and
8 important purchase the overwhelming majority of consumers will make in their lifetime is
9 with respect to their car, and most of these purchases ***are financed, which was the***
10 ***situation in the instant case.***

12 The legislative and public policy objectives behind fee shifting statutes are clear.
13 They are promulgated to ensure access to justice via the Courts by enabling persons
14 (consumers) of limited means to retain the services of a competent attorney via statutory
15 fee shifting, not only to vindicate the rights of the individual consumer, but to discourage
16 or otherwise eradicate certain conduct which the Legislature has found to be deleterious
17 to both the consumer and business marketplace. Indeed, a claim for consumer
18 fraud/deceptive trade practices ***is a pure creature of statute*** wherein statutory fee
19 shifting is an ***integral part*** of any claim or settlement made pursuant to 41.600.

21 On **August 17, 2017**, the parties agreed to a mutual stand down of noticed
22 depositions in order to explore settlement possibilities, which included Plaintiff possibly
23 financing the purchase of a new vehicle from SAHARA. Plaintiff also agreed to hold off
24 on filing his motions to compel/ *See Exhibit 1: 001.*

26 On **September 5, 2017**, after the mutual stand down, Defendants' first offer only
27 encompassed a trade-in of Plaintiff's vehicle in exchange for a new comparable vehicle
28 which gave the Plaintiff a \$21,000.00 positive equity position in the new vehicle, *but there*

1 was no allocation or payment of any fees or costs under NRS 41.600(3)(c).
2 Consequently, this offer was rejected. *See Exhibit 1; 011-012.*

3 Later that same day, on **September 5, 2017**, Plaintiff made the counter offer set
4 forth *supra*, -- \$13,700.00 for payoff on the vehicle, \$37,226.00 in fees and \$5,330.00 in
5 costs. *See Exhibit 1; 012.*

6 Because Defendants did not accept Plaintiff's counter offer, both Defendant and
7 Plaintiff went forward with their respective depositions, and Plaintiff prepared and filed
8 his motions to compel, which Plaintiff prevailed on.¹⁴ Plaintiff also opposed SAHARA's
9 motion for protective order on proper and timely noticed depositions of SAHARA's
10 employees. Based on Plaintiff *prevailing* on his motion to compel supplemental RFA
11 responses, Plaintiff took those depositions off calendar. *See Exhibit 8; DCRR.* However,
12 fees and costs on both sides increased and did not remain static, which is the inherent
13 nature of litigation as well as under statutory fee shifting, ***but the parties were still***
14 ***engaged in settlement negotiations.*** *See Exhibit 1, emails, 012-021; GOW Decl.*¹⁵
15

16 On **September 25, 2017**, Plaintiff submitted the following offer to settle:
17 SAHARA pays the lender the balance owed on the vehicle in the amount of \$17,345.74
18 and Plaintiff keeps the vehicle (again absorbing the diminished value to the vehicle);
19 reimburse Plaintiff for attorneys' fees incurred in the amount of \$60,840.00 and costs
20 incurred in the amount of \$9,086.70. The total demand to settle the case was
21 \$87,272.00. *Exhibit 1, 015-016.*
22
23
24

25 ¹⁴ See Exhibit 8, DCRR.

26 ¹⁵ Throughout September 2017 the additional time incurred, included, but was not limited to
27 Defendant taking the deposition of Plaintiff's expert for almost seven (7) hours, in addition to two and half
28 hours of deposition preparation time with his expert. Plaintiff took the depositions of two of SAHARA's
employees and had to prepare to take those depositions. Plaintiff also had to prepare his Motion to Compel
responses to RFAs and interrogatories and prepare and appear at the hearing, which he held off on as part
of the August 2017 stand down, in addition to preparing his Opposition to SAHARA's Motion for Protective
Order.

On September 30, 2017, SAHARA counter-offered with \$7,000.00 to the Plaintiff and \$20,000.00 for fees and costs for a total offer of 27,000.00. *Exhibit 1, 017.*

On October 2, 2017, Plaintiff rejected SAHARA's counter, and made the following offer. Pay Plaintiff \$14,500, and Plaintiff keeps the vehicle. Reimburse Plaintiff for attorneys' fees incurred in the amount of \$55,000.00 and \$9,086.70 in costs, for a total demand of \$78,586.00. *Exhibit 1, 018;*

On October 5, 2017, Defendants countered with \$9,000.00 to the Plaintiff and \$ 25,000.00 in fees and costs for a total offer of \$34,000.00. *Exhibit 1, 019.*

Later that same day, Plaintiff rejected Defendants' counter and stood on his previous counter-offer of October 2, 2017. *Exhibit 1; 019.* Soon after on that same day, October 5, 2017), Defendants propounded their lump sum offer of judgment for \$45,000.00. It was communicated to and discussed with the Plaintiff and was allowed expired by operation of law.

D. WHETHER THE FEES SOUGHT BY THE OFFEROR ARE REASONABLE AND JUSTIFIED IN AMOUNT¹⁶

Defendants have not met their burden on this factor and Plaintiff is unable to adequately address this factor because Defendants ***have refused*** to provide any of their attorneys' time sheets to Plaintiff to review. ***Defendants are not allowed to move for fees and refuse to produce to opposing counsel their detailed billing statements.*** See *Golden Road, Love* and Rule 54(d), *supra*.

Defendants' counsel was very clear in his affidavit attached to Defendants' motion for fees. Detailed and itemized billing statements ***existed*** when they filed their motion on December 19, 2017, and he personally reviewed all of them, but they were ***intentionally*** not attached. This was not an oversight or a mistake. This was made

¹⁶ This is also an express factor under *Bruzell* in which Defendants also have the burden.

1 clear via a supplemental declaration from opposing counsel, filed on December 20, 2017,
2 indicating that they would bring their itemized billing **with them to the hearing**, and
3 give an unredacted copy to the Court, and a redacted copy to Plaintiff's counsel.

4 All Defendants' counsel did was state "total" hours without disclosing **what** exactly
5 was done, **when** it was done, how much time each task took, what attorney was
6 responsible for those tasks etc. Plaintiff's counsel requested in writing those billings to
7 be produced in unredacted format, and Defendants refused this request. *See Exhibit 2,*
8 *emails.* Defendants refusal to produce billing records is highly prejudicial to the Plaintiff,
9 and Plaintiff's counsel has not had **any** opportunity to review those statements to
10 question their "reasonableness and necessity" under both *Beattie* and *Brunzell*.

12 Consequently, the Court should either deny Defendants' motion for attorney's
13 motion in its entirety, which it has the discretion to do, or continue the motion to give
14 Plaintiff's counsel ample time to review and question those billings vis-à-vis any fees that
15 were incurred after Defendants' Rule 68 offer of judgment. However the Court has ample
16 information and evidence at this point in time to rule that Defendants are **not** entitled to
17 any fee award based upon NRS 18.001(2)(b).
18

19 IV

20 CONCLUSION

21 Based on the aforementioned, Defendants are not entitled to any fee award under
22 NRS 18.010(2)(b). Nor are fees warranted under Rule 68, either because they are
23 unwarranted under the *Beattie* factors, and/or because they have **refused** to submit their
24 detailed billings when they were required to do in compliance with Nevada law in order
25 to meet their burden.
26
27
28

1
2
3 Dated this 23rd day of December, 2018
4

5 By /s/ George O. West III
6 GEORGE O. WEST III
7 Law Offices of George O. West III
8 *Consumer Attorneys Against Auto Fraud*
9 **Attorney for Plaintiff**
10 **DERRICK POOLE**

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CRAIG B. FRIEDBERG
Law Offices of Craig B. Friedberg, Esq.
Attorney for Plaintiff
DERRICK POOLE

DECLARATION OF GEORGE O. WEST III

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, George O. West III, hereby declare :

That I am the attorney for the Plaintiff in this case, and I am admitted to practice law in all of the courts of the State of Nevada, and I have personal knowledge of the matters in this declaration, and if called as a witness I would and could competently testify:

1. That all of the exhibits referenced and identified in this opposition attached hereto are what they are purported to be.

2. In addition to the written settlement communications and negotiations reflected in the settlement emails at Exhibit 1, I had at least nine (9) conversations regarding settlement with Mr. Bendavid between August 2017 and October 2017. Four to five were over the phone and at least four (4) were ***in person***, that occurred prior to the taking the depositions of Plaintiff's expert and SAHARA's employees at Mr. Bendavid's office, (all on different days), and two (2) outside of the court room, one of which Mr. Friedberg was also present. When we first began negotiations in mid-August, Mr. Bendavid inquired about what my fees and costs were. I indicated fees are just a little over \$37,000.00 and that costs were a little over \$5,000.00. The assertion that Plaintiff's counsel ignored settlement and did not engage in any good faith settlement discussions is simply not true and the emails at exhibit 1 contradict this contention.

I certify that the aforementioned is true and correct under penalty of perjury under the laws of the state of Nevada.

Executed this 15th day of January, 2018.

/s/ George O. West III
George O. West III

EXHIBIT 1

From: Jeffery Bendavid <J.Bendavid@moranlawfirm.com>
Subject: RE: Our conversation today
Date: August 17, 2017 at 10:30:55 PM PDT
To: George West III <gowesq@cox.net>
Cc: Craig Friedberg <attcbf@cox.net>

Thanks George. Yes this summarizes what we discussed and we agree to extend the dates to September 15th. We will continue the expert depo for Wednesday of next week and continue with our settlement discussions. Talk to you soon.

Jeff Bendavid

From: George West III [<mailto:gowesq@cox.net>]
Sent: Thursday, August 17, 2017 8:15 PM
To: Jeffery Bendavid <J.Bendavid@moranlawfirm.com>
Cc: Craig Friedberg <attcbf@cox.net>
Subject: Our conversation today

Jeff,

This email will confirm our tel con today. I indicated I would inquire with my client with the possibility of purchasing a new dodge Ram from your client. If he is amenable to this, then the numbers have to be right. The outstanding balance is about 17k. Obviously we both agreed that has to be paid off by your client as part of any potential new purchase. You argued you client is entitled to depreciation for "reasonable use," I disagreed for the reasons stated. I will inquire with him about this possibility and if he is interested, then we can start discussing potential numbers on the vehicle which would. The truck has a little under 24k on it. That being said, there is still the issue of fees and costs, which as I said is the 800 pound guerrilla in the room and always is, but it may be moot if my client is not interested in purchasing a new truck from your client because of trust issues. In exchange, we agreed to a temporary stand down on both sides. You would take my expert's depo off which is set for next Wednesday and I would take the depositions of the employees I have noticed on the 29th and the 30th off as well. We agreed to mutually extend the discovery cut off through September 15th and we also agreed to waive time to renotice the depositions we have taken off and agree to renotice those on mutually agreeable dates. I agreed to hold off on my motions to compel through next Wednesday. *Please confirm via email forthwith your agreement with this email on the discovery cut*

SETTLEMENT EMAILS 001

JOINT APPENDIX 1151

extension and renoticing and taking of these depositions as I want to ensure we both are on the same page as we are both taking our respectively noticed depositions based upon our agreement.

George O. West III, Esq
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive
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www.arizonaslemonlawattorney.com

Admitted to Nevada, Arizona and California*
* Inactive in California

Subject:Poole

Date:Sun, 20 Aug 2017 20:05:36 -0700

From:George West <gowesq@cox.net>

To:Jeff Bendavid

<j.bendavid@moranlawfirm.com>

CC:Craig Friedberg <attcbf@cox.net>

Jeff I talked with my client today he is not opposed "in principle" to the idea of possibly settling in exchange for a new vehicle.. However we need to talk about numbers will get back to you on that. The new truck would a 2017 ram 1500. Also the issue of attorneys fees as well I'll get back to you on that by Thursday as well. I'm in Phoenix through late Tuesday and buried on Wednesday when I get back.

Preliminarily I will tell you that any settlement will have to involve pay off the outstanding balance which is approximately 17,000 appraising his current truck in very good condition assuming no accidents. Not black but bluebook. It's got about 23,500 on it. If your client wants to see it let us know. We're still a long way away from getting this done but I just wanted to call mery tell you that in principle he not averse to what we discussed but again it comes down to whether it works out for him on payments how much is given his trade pay off of the current balance and payment of attorneys fees and costs incurred to date.

Sent from my iPhone 6 Plus

Please forgive any typos or bad voice recognition

George O. West III, Esq

Consumer Attorneys Against Auto Fraud

10161 Park Run Drive

SETTLEMENT EMAILS 003

JOINT APPENDIX 1153

Subject: Poole

Date: Wed, 23 Aug 2017 17:06:27 -0700

From: George West III <gowesq@cox.net>

To: Jeffery Bendavid

<j.bendavid@moranlawfirm.com>

Jeff

Give me a call on my cell regarding potential settlement. 702-278-5250

George O. West III, Esq

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SETTLEMENT EMAILS 004

JOINT APPENDIX 1154

Subject:Poole

Date:Thu, 24 Aug 2017 11:40:41 -0700

From:George West <gowesq@cox.net>

To:Jeff Bendavid

<j.bendavid@moranlawfirm.com>

CC:Craig Friedberg <attcbf@cox.net>

Jeff I'm slammed today I am dealing with getting my rental ready for a tenant and I've got contractors over and got to deal with that so can we talk tomorrow after 330 and I'll have some numbers for you on our side.

Sent from my iPhone 6 Plus

Please forgive any typos or bad voice recognition

George O. West III, Esq

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(702) 664-0459 (Fax)

SETTLEMENT EMAILS 005

JOINT APPENDIX 1155

Subject:Poole

Date:Mon, 28 Aug 2017 12:39:06 -0700

From:George West III <gowesq@cox.net>

To:Jeffery Bendavid

<j.bendavid@moranlawfirm.com>

CC:Craig Friedberg <attcbf@cox.net>, Stephanie
Smith <s.smith@moranlawfirm.com>

Jeff,

Just so you know, we need to get this wrapped up in principal by tomorrow close of biz and get the truck in, do the deal, get fees and costs agreed to, or we need to start looking at mutually convenient dates to renotice Mr. Avillini's depo, and Plaintiff's depositions and I need to finish up my motions to compel and get them on calendar. Please advise. Thx.

George O. West III, Esq

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SETTLEMENT EMAILS 006

JOINT APPENDIX 1156

Subject:Poole

Date:Tue, 29 Aug 2017 18:23:13 -0700

From:George West III <gowesq@cox.net>

To:Jeffery Bendavid

<j.bendavid@moranlawfirm.com>

CC:Craig Friedberg <attcbf@cox.net>

Jeff,

We did vehicle inspection today, credit ran, vehicle test drove. I think my client's credit score of 611 is going to be very difficult to get this done, but let us know so we can figure out if we are moving forward.
Thx.

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* Inactive in California

SETTLEMENT EMAILS 007

JOINT APPENDIX 1157

Subject:RE: Poole

Date:Thu, 31 Aug 2017 22:46:18 +0000

From:Jeffery Bendavid

<J.Bendavid@moranlawfirm.com>

To:George West <gowesq@cox.net>

CC:Craig Friedberg <attcbf@cox.net>

Hi George. We are going over it tomorrow with their people. I should have an offer over to you later tomorrow. Thanks.

Jeff Bendavid

From: George West [<mailto:gowesq@cox.net>]

Sent: Thursday, August 31, 2017 3:37 PM

To: Jeffery Bendavid J.Bendavid@moranlawfirm.com

Cc: Craig Friedberg attcbf@cox.net

Subject: Poole

Jeff I am in seminar all day today but we need to see if we can do this otherwise we need to reschedule those depositions and I need to finish and get my motions to compel on calendar. Please advise thx

Sent from my iPhone 6 Plus

Please forgive any typos or bad voice recognition

George O. West III, Esq

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SETTLEMENT EMAILS 008

JOINT APPENDIX 1158

Subject:Re: Poole

Date:Sun, 3 Sep 2017 13:50:04 -0700

From:George West III <gowesq@cox.net>

To:Jeffery Bendavid

<J.Bendavid@moranlawfirm.com>

CC:Craig Friedberg <attcbf@cox.net>

Jeff never heard back on this. If we are going to try and get this done, then we need to have the hard numbers worked out ***close of business Tuesday***, but again, I see financing as being the major obstacle, but we need to get this either worked out, or we need to get dates to put the depositions back on calendar asap, and I have to finish my motions to compel and get them filed on OST at this point. Thx for following up. Call me on my cell. Thx. Please advise.

On Aug 31, 2017, at 3:46 PM, Jeffery Bendavid
<J.Bendavid@moranlawfirm.com> wrote:

Hi George. We are going over it tomorrow with their people. I should have an offer over to you later tomorrow. Thanks.

Jeff Bendavid

From: George West [<mailto:gowesq@cox.net>]
Sent: Thursday, August 31, 2017 3:37 PM
To: Jeffery Bendavid <J.Bendavid@moranlawfirm.com>
Cc: Craig Friedberg <attcbf@cox.net>
Subject: Poole

Jeff I am in seminar all day today but we need to see if we can do this otherwise we need to reschedule those depositions and I need to finish and get my motions to compel on calendar. Please advise thx

SETTLEMENT EMAILS 009

JOINT APPENDIX 1159

Subject: Poole

Date: Tue, 5 Sep 2017 10:24:50 -0700

From: George West <gowesq@cox.net>

To: Jeff Bendavid

<j.bendavid@moranlawfirm.com>

CC: Craig Friedberg <attcbf@cox.net>

Jeff, we need to get something worked out by close of business today or we need to put these Depp owes back on Calendar and I need to get my motions on Calendar so let's get this done or we need to move forward. My client is leaving town for a 10 day vacation on September 10 so if we're going to get this done this is the time if not no big deal let's just get the Depp on and move forward

Sent from my iPhone 6 Plus

Please forgive any typos or bad voice recognition

George O. West III, Esq

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SETTLEMENT EMAILS 010

JOINT APPENDIX 1160

Subject:Re: Sahara Chrysler Jeep - Poole
Date:Tue, 5 Sep 2017 13:55:57 -0700
From:George West III <gowesq@cox.net>
To:Jeffery Bendavid
<J.Bendavid@moranlawfirm.com>
CC:Craig Friedberg <attcbf@cox.net>

Jeff,

Per our tel con today, your settlement proposal (package) does not provide for any fees and costs under 41.600(3). This is a fee shifting statute case, and in all fee shifting statute cases, including the hundreds I have done, there is always payment of a separate payment or benefit to the Plaintiff and a separate payment of fees and costs. That is the way it also shakes out at time of trial if Plaintiff prevails. Jury awards "x" amount in damages. Court then awards the fees separate from the damages awarded pursuant to a fee petition brought under 41.600(3). That is the way it has always been and that is the way it is always done in the hundreds of these auto fraud fee shifting cases I have done.

Your client is basically trying to skirt paying any fees as apart of any "settlement" and that is a non starter and my client is fully on board with this. If Plaintiff prevails, your client is looking at a one way mandatory fee shifting statute. Defendants pay fees in fee shifting cases and that is the expectation of my client and has been from the very beginning whether via settlement or after trial, because that is what he is entitled to under the law to be made whole. I indicated very clearly to you when you first wanted to explore settlement possibilities two weeks ago what fees and costs were. If my client prevails, he is entitled to a mandatory one way award of fees and

SETTLEMENT EMAILS 011

JOINT APPENDIX 1161

costs, and as you said, settlements are about trying to limit risk, but as I said, with no payment of fees and costs incurred, there is no settlement potential here. I made that clear to you during our conversation today and my client fully expects your client to pay those fees as part of any settlement.

I have communicated your client's offer to my client. It is rejected, without payment of reasonable fees and costs, there can be no settlement as he is not being made whole, which is what 41.600(3) contemplates with the mandatory fee shifting provision. Here is our counter. Your client pays off the balance on the truck 17.3k. **My client keeps the truck.** Your client also pays \$ 37,226 in fees calculated at \$ 450.00 an hour and \$ 5,330.62 in incurred costs. As you know fees will rise exponentially on both sides once we get in trial most and proceed down that course beginning with the depositions that were taken off will now need to be taken. **That is the counter. It is open though close of business tomorrow.** As I also mentioned, I will be getting some alternative dates for Mr. Avilini's deposition for next week, please do the same with the employees I have previously noticed. I will be going forward with my motions to compel on an OST basis if we can't get this done by tomorrow.

On Sep 5, 2017, at 1:10 PM, Jeffery Bendavid
<J.Bendavid@moranlawfirm.com> wrote:

Hi George. The following is confidential and protected settlement offer we made you today:

Your client has chosen a new 2017 truck, with a price of \$42,915.

Your client's current vehicle has a payoff of \$17,300.

My client willing to offer a settlement package to your client, and include it all in a "trade value", which will be \$37,915. So approximately a settlement value for this case in the amount of \$21K.

The following is how it would breakdown:

1. New Vehicle: \$42,915
2. Trade-in settlement value: \$37,915
3. Payoff of Vehicle to Well: \$17,300
4. Price of New Vehicle after trade: \$22,300

Under this proposal, your client would get a new vehicle for less amount than his old one, and \$21K in equity, which provides your client a great settlement package. Look forward to

SETTLEMENT EMAILS 012

JOINT APPENDIX 1162

moving our clients toward a settlement of this case.

Jeffery A. Bendavid, Esq.

<image003.png>

630 SOUTH 4TH STREET | LAS VEGAS, NV 89101

PHONE: (702) 384-8424 | FAX: (702) 384-6568

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SETTLEMENT EMAILS 013

JOINT APPENDIX 1163

Subject:Poole

Date:Fri, 22 Sep 2017 21:37:53 -0700

From:George West III <gowesq@cox.net>

To:Jeff Bendavid

<j.bendavid@moranlawfirm.com>

CC:Craig Friedberg <attcbf@cox.net>

Jeff,

In thinking about this more, I don't think we need a judge to settle this case, we can either do that among ourselves, otherwise we just try the case. Also we are too close to trial at this point to do a settlement conference. We need to get geared up for trial at this point, (at least Craig and I do), and we need to set up a 2.67 to go over exhibits, we need to do our final pre trial disclosures, etc... As I said, fees and costs have gone up significantly since August. I will get back to you on a new offer. We heard nothing from your client about our last counter which has expired. You can communicate it to your client and decide what they want to do. Again, there will be two components that comprise any settlement in light of the mandatory fee shifting. "x" amount to the client and "x" amount for fees and costs. No other way to do it. We will get you our offer this coming Monday or Tuesday.

George O. West III, Esq

Consumer Attorneys Against Auto Fraud

10161 Park Run Drive

Suite 150

Los Angeles, CA 90045

SETTLEMENT EMAILS 014

JOINT APPENDIX 1164

Subject:Fwd: Poole

Date:Mon, 25 Sep 2017 13:49:07 -0700

From:George West III <gowesq@cox.net>

To:Jeff Bendavid

<j.bendavid@moranlawfirm.com>

CC:Craig Friedberg <attcbf@cox.net>

Jeff,

Per my previous email to you, after talking with my client, here is Plaintiff's offer to settle. As I mentioned to you before the depo of Mr. Avillini, fees and costs have gone up significantly since the last offer since the last offer and having a 6.2 hour depo of Mr. Avillini did not help. He still needs to get paid his outstanding fees of \$ 1,820.00 for his time and that is *separate* from this offer irrespective of whether we settle. The cost figure below does not include this amount as that is your client's responsibility to pay under the code. Mr. Avillini must be paid in full prior to any agreement being signed or any dismissal being filed, assuming we can arrive at a settlement.

There are the terms. Pay my client \$17,345.74, which is the balance owing on his truck. He keeps the truck along with absorbing diminished value based upon the undisclosed information given to him about the nature and extent of the accident as he would not have entered into the contract had he been told the information. He deals with the DV, but keeps the truck. If your client has not thought that this is not a viable punitive damage case, I would really think about that given the information acquired via discovery.

Pay fees in the amount of \$ 60,840 based on \$ 450.00 per hour. This is for time for both myself and Craig since he got formally associated

SETTLEMENT EMAILS 015

JOINT APPENDIX 1165

into the case. Pay costs in the amount of \$ 9,086.70. This includes costs for the recent depositions of Mr. Spruell and Grant and focus group (which is a recoverable cost). ***This offer will be open through close of business Friday, September 29, 2017 5:00 p.m.. It can only be accepted via email. Time is of the essence.*** I will draft settlement agreement for your review. No confidentiality. That is a non starter. I never advise any client to accept one as that is just an invitation to a second generation lawsuit and anyone can talk about any case that is part of any public record. No admission of liability, mutual release standard terms etc... Dismissal of action with prejudice. If accepted, settlement funds must be delivered to my office no later then ***October 6, 2017 by 4:30 p.m. Time is of the essence. The settlement check shall be made payable to "George O. West III Trust Account."***

Please let us know what you clients want to do.

Subject:RE: Poole

Date:Sat, 30 Sep 2017 01:59:59 +0000

From:Jeffery Bendavid

<J.Bendavid@moranlawfirm.com>

To:George West III <gowesq@cox.net>

CC:Craig Friedberg <attcbf@cox.net>

Hi George. This email is made under settlement negotiations. I have authority to email you this counter-offer. Without getting into all the specific details and arguments that have been made, my client is offering to pay Plaintiff, \$7,000, which he can do whatever he wants, pay down the note, or keep. Up to him. He keeps the truck. In addition, my client will pay \$20,000 in Plaintiff's attorneys fees and cost incurred in this matter. This of course does not include the expert fees that are presently due. Obviously, keeping the dialogue open is important. Let me know if you want to discuss the offer. Thanks. Talk to you soon.

SETTLEMENT EMAILS 017

JOINT APPENDIX 1167

Subject:Poole

Date:Mon, 2 Oct 2017 17:03:36 -0700

From:George West III <gowesq@cox.net>

To:Jeffery Bendavid

<j.bendavid@moranlawfirm.com>,

Stephanie Smith

<s.smith@moranlawfirm.com>

CC:Craig Friedberg <attcbf@cox.net>

Jeff,

We are reviewing the stip. We are going to make a couple of small changes making some of the evidentiary stip "mutual." I have discussed this matter with my client
Plaintiff's counter to your counter is \$ 14,500 to my client, he keeps the car. \$ 55,000.00 in fees and \$ 9,086.70 in costs. The cost figure does not include the amount owed to Mr. Avillini for his deposition time that you office owes to him. This will be open through 5:00 p.m. October 5th.

George O. West III, Esq

Law Offices of George O. West III

10161 Park Run Drive

Suite 150

Las Vegas, NV 89145

(702) 664-1168

(702) 664-0459 [fax]

Member of NACA, the National Association of Consumer Advocates,
www.naca.net.

...

SETTLEMENT EMAILS 018

JOINT APPENDIX 1168

Subject:Re: Poole

Date:Thu, 5 Oct 2017 14:53:01 -0700

From:George West III <gowesq@cox.net>

To:Jeffery Bendavid

<J.Bendavid@moranlawfirm.com>

CC:Craig Friedberg <attcbf@cox.net>, Stephanie Smith <s.smith@moranlawfirm.com>

Jeff,

I have spoken with my client and have forwarded your counter offer to him . It is rejected. Plaintiff stands on his last counter offer. It is open through 5:00 tomorrow.

Please forward the stip on your motions and please apprise of the status of payment of Mr. Avillini.

On Oct 5, 2017, at 2:22 PM, Jeffery Bendavid
<J.Bendavid@moranlawfirm.com> wrote:

Hi George. I have spoken to my client and we are countering your recent offer. My client will offer \$9,000 to your client and \$25,000 in attorney's fees and cost. This again does not include the expert fees. Please advise as soon as possible so we can move this along. Thanks. Talk to you soon.

Jeff Bendavid

From: George West III [<mailto:gowesq@cox.net>]

Sent: Monday, October 2, 2017 5:04 PM

To: Jeffery Bendavid <J.Bendavid@moranlawfirm.com>; Stephanie Smith <s.smith@moranlawfirm.com>

Cc: Craig Friedberg <attcbf@cox.net>

SETTLEMENT EMAILS 019

JOINT APPENDIX 1169

Subject:Poole

Date:Thu, 5 Oct 2017 17:16:09 -0700

From:George West III <gowesq@cox.net>

To:Jeffery Bendavid

<j.bendavid@moranlawfirm.com>

CC:Craig Friedberg <attcbf@cox.net>,
Stephanie Smith

<s.smith@moranlawfirm.com>

Jeff,

Received your OJ. Will communicate it to my client. ***In the meantime***, this is my ***fourth*** request to return the stip to continue your motions. You indicated in both and email and tel con that you had no problem with continuing your motions to November 9th due to my unavailability. ***This is my last time asking***, If I don't get the stip back from you via email by close of business Monday October 9th, I will file my ex parte application with the Court to have them continued. This is my ***fourth*** request for payment of Mr. Avillini's fees to be paid for his deposition time. If I don't receive ***written confirmation*** via email that a check has been sent to Mr. Avillini ***by Monday October 9th***, I will file my motion with the discovery commission compelling payment, with a request for sanctions for your continued failure to do so. Monday will be 17 days since his deposition. More than sufficient time has elapsed to him to be paid. I have requested this four times with no response. Please also mail your signature page to my office on the DCCR as I requested earlier today, if I don't get it then I will just file the DCCR with a cover letter indicating your office would not mail the signature page to me.

SETTLEMENT EMAILS 020

JOINT APPENDIX 1170

George O. West III, Esq
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www.americasautofraudattorney.com
www.phoenixlemonlawattorney.com
www.arizonaslemonlawattorney.com

Admitted to Nevada, Arizona and California*
* Inactive in California

From: George West gowesq@gmail.com
Subject: Re: Poole
Date: January 10, 2018 at 3:43 PM
To: Stephanie Smith s.smith@moranlawfirm.com
Cc: Jeffery Bendavid j.bendavid@moranlawfirm.com, Craig Friedberg attcbf@cox.net



What exactly are you producing to be clear. At the very least you need to provide a privilege log for each separate redaction and show them to the court to make the call on that. So again, what exactly are your producing on Friday? The attorney client privilege is understood assuming what is in the billing records is specific enough to rise to a confidential communication, but work product would only apply to your mental thoughts and impressions and I don't know why such information would be on billing records. So again, please elucidate on this issue and on what is being produced.

On Jan 10, 2018, at 3:36 PM, Stephanie Smith
<s.smith@moranlawfirm.com> wrote:


George- We appreciate your position in needing to see the invoices themselves, however, we are only willing to provide you with redacted ones in order to preserve attorney-client privilege and the attorney work product protections since you have filed your notice of appeal with the Supreme Court. I can get that to you by Friday. Thanks.

From: George West III [<mailto:gowesq@cox.net>]
Sent: Monday, January 8, 2018 7:50 PM
To: Jeffery Bendavid <j.bendavid@moranlawfirm.com>
Cc: Craig Friedberg <attcbf@cox.net>; Stephanie Smith <s.smith@moranlawfirm.com>
Subject: Poole

Jeff,

You need to send us unredacted billings that are not privileged. The only privilege that could apply is atty client relating to specific and identifiable communications with your client involving a time entry *involving a specific topic*, not a general topic like discuss status or MSJ or tel con with client re strategy etc... Otherwise, it impairs and prejudices our ability to respond to the reasonableness of your fee petition. I look forward to receiving those by Wednesday they should be easy to get and email over. Thank you for your anticipated and immediate attention in this regard.

George O. West III, Esq
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive
Suite 150

From: Jeffery Bendavid J.Bendavid@moranlawfirm.com 
Subject: RE: Poole
Date: January 10, 2018 at 3:57 PM
To: George West gowesq@gmail.com, Stephanie Smith s.smith@moranlawfirm.com
Cc: Craig Friedberg attcbf@cox.net



George. As Stephanie indicated, you will be receiving a copy of the redacted bills. At that time, you will see what you are getting. The time entry, the amounts and the biller will all be there. The actual detailed entry of the work done, will be redacted. The court will get an unredacted set to review in camera. Thanks.

Jeff Bendavid

From: George West [mailto:gowesq@gmail.com]
Sent: Wednesday, January 10, 2018 3:43 PM
To: Stephanie Smith <s.smith@moranlawfirm.com>
Cc: Jeffery Bendavid <J.Bendavid@moranlawfirm.com>; Craig Friedberg <attcbf@cox.net>
Subject: Re: Poole

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Sent: Monday, January 8, 2018 7:50 PM
To: Jeffery Bendavid <J.Bendavid@moranlawfirm.com>
Cc: Craig Friedberg <attcbf@cox.net>; Stephanie Smith <s.smith@moranlawfirm.com>
Subject: Poole

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EXHIBIT 3